

Pamphlet

DISTRICT COURT.

February, 24th, 26th, and 27th, 1872.

MARY EMMA SCHLESSINGER

vs.

THE ADAMS EXPRESS COMPANY.

BEFORE JUDGE THAYER AND JURY.

WM. L. HIRST and HAMPTON TODD, *for Plaintiff.*

DAVID WEBSTER, *for Defendants*

DISTRICT COURT.

No. 815.

MARCH, 1871.

MARY EMMA SCHLESSINGER

vs.

THE ADAMS EXPRESS COMPANY.

The Defendants move for a Rule to show cause why a new trial should not be granted, and file the following reasons in support of said motion:

Library

1. Because the learned Judge erred in admitting the plaintiff and her son to testify as to the contents of the four trunks on the 26th of January, 1870, as evidence that they contained the same identical things on the 26th of April following, the date when they were delivered to defendants—the plaintiff and her son remaining in Philadelphia, during all the said interval of time while the said trunks, during the same time remained in New York in the hands of a gratuitous bailee without hire, and this without examining the said bailee as a witness, or offering any evidence to show by whom, or in what manner the said trunks were kept and cared for, nor who had access, or the means of access to them.

2. Because the learned Judge erred in submitting to the Jury the question of the contents of the trunks on the evidence referred to in the foregoing reason—No. 1.

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3. Because the learned Judge erred in not entering a nonsuit on the close of the plaintiff's case, as moved for by defendant's counsel.


4. Because the learned Judge erred in admitting the evidence of Judge Pierce to prove the plaintiff's circumstances and condition of life, and that the alleged contents of the trunks were such as a lady in her circumstances might have, and in allowing the plaintiff to prove what property she *once* possessed.

5. Because the learned Judge erred in charging the Jury, that even though the defendants' clerk, Mr. Granger, exceeded his authority in promising plaintiff to keep her trunks one entire year, if such a promise ever was made, the Company was nevertheless bound by his act and promise—and that defendants had no right to sell the trunks or their contents within the year, for non payment of the freight and charges.

6. Because the learned Judge erred in leaving to the Jury the question of defendants' ordinary care as gratuitous bailees when there was not the slightest evidence of any want of ordinary care, and in not charging the Jury on that point, as requested by defendants' counsel.

7. Because the learned Judge erred in instructing the Jury that the manner of selling the four trunks and contents at auction was not an execution of the order of sale, granted by the Court of Common Pleas, and that such a sale was, *in point of fact*, a wrongful conversion of the goods; and because the whole charge on this point was, in language and emphasis (although unintentional), inflammatory in the highest degree on the question of damages.

8. Because the learned Judge erred in instructing the Jury to set "a dry market value" on each of the articles



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contained in the trunks, when there was no legal evidence of their contents beyond what the *defendants'* witnesses described, and when there was not the slightest evidence of *market value* before the Jury.

9. Because the learned Judge erred (1) in not charging the Jury as requested in defendants' 1st point. (2.) In declining to answer, or charge or read, defendants' 2d, 3d, 6th, 7th, 8th, 9th, 10th points. (3.) In his answers to defendants' 4th and 5th points respectively.

10. Because the learned Judge erred in overruling the several objections of defendants' counsel to the evidence adduced.

11. Because the damages are excessive, and the verdict is against the weight of the evidence.

12. General errors.

DAVID WEBSTER,

For Defendants.

March 2d, 1872.

DEFENDANTS' POINTS.

1. That if defendants are liable, they are liable only as gratuitous bailees, without hire, and plaintiff must prove neglect and want of ordinary care in order to establish liability.

THE JUDGE'S ANSWER—Yes. "If they offered to deliver the property and were to keep it without compensation. The plaintiff must show either neglect or misconduct."

2. That there is no evidence of neglect or want of ordinary care.

ANSWER—"Refused."

3. That if the evidence shows that Mr. Granger had no authority to contract or promise to keep the trunks for one year, then such promise would not bind the defendants.

ANSWER—"Refused."

4. That having a lien on the trunks for freight, and not knowing the plaintiff's residence or address, defendants had the right to obtain an Order of Court for the sale of these trunks; that such order was made, and if complied with, then the defendants are not liable in this action for any amount whatever.

5. That the evidence given by the plaintiff and her son of the contents of these trunks in January, 1870, is not evidence of their contents at the time they came into defendant's possession in the month of April following—neither plaintiff nor her son having had knowledge of or access to them in the interval, and no one having been examined to show who had the care or custody of them in the interval.

ANSWER—"Refused—but I left it to the Jury to say whether such evidence was satisfactory, and told them that

it should be received with caution, and very carefully weighed and examined."

6. That there is no evidence of the contents or value of these trunks except the son's testimony as to the contents of one trunk at the time he opened it in the basement of the defendants' office, and the testimony of Gorman and Hicks, and the Jury must confine themselves to *their* description of contents and value at the time they examined them.

ANSWER—"Refused."

7. That plaintiff was bound to disclose the value and contents of the trunks at the time defendants told them "they did not charge for storage, and were keeping them gratuitously."

ANSWER—"Refused."

8. That plaintiff cannot recover, since she did not declare value or contents.

ANSWER—"Refused."

9. That if the defendants took ordinary care of these trunks plaintiff must prove fraud or negligence against them in order to recover. And there is no proof of such fraud or negligence.

ANSWER—"The plaintiff must prove negligence or misconduct. There is no evidence of fraud."

10. The verdict must be in favor of defendants.

ANSWER—"Refused."

D. WEBSTER,

For Defendants.

Plaintiff claims \$12,050. Verdict for plaintiff for \$6000.

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TESTIMONY.

MARY M. SCHLESSINGER, the plaintiff, sworn on behalf of the plaintiffs.

[*Direct examination by Mr. Hirst :*]

Q. Tell the Jury all you know about these trunks of yours?

A. I don't remember the dates exactly. I called at Adams Express Office and asked the party behind the counter where I could have trunks brought from New York. He directed a colored man to take me up to the counter. I told the clerk I wanted to have my trunks brought from New York. He demurred and said perhaps they would not be willing to give them up. I showed him a letter from Mrs. Lamporte, requesting me to have the trunks taken away. They told me the trunks would be in Philadelphia within a few days. I don't remember how many days. At the end of the time I called and saw my trunks. The clerk pointed them out to me. I asked him then whether I should pay the freight which was eight dollars. I handed him (Granger) a ten dollar note, and he said I should pay for them when I took them away. My memory is failing me about the time. Then I asked him if he would keep them for me on storage, and what it would cost. He said that they were not allowed to take storage but that they would keep my trunks. I asked him how long. He said "one year, no longer." At the end of something like two months, I called there with my son, and he went down stairs. They took him down in the basement. He took a book out of one of the trunks, and came up stairs with the book with him, and told me to ask the gentleman again in

his presence which I did, and he (Granger) made exactly the same answer, that was, that he would charge no storage, if I could pay them for the transport, when I took them away, and that they would be kept one year. He said "we are not allowed to take storage, we will keep them for nothing and for one year."

Q. You did not offer again to pay him the freight?

A. I did offer again to pay the freight. He said again "you may pay when you take them away." I never went there again until the month of February, when I had some goods brought from New York, and John F. Ohl told me, I might put anything else I chose in his store. Then I came to Adams Express to get my trunks to put them at Mr. Ohl's, then they told me my trunks were sold.

Q. How soon after you got this letter (indicating) did you go to Adams Express?

A. That was the last week in April, '70, I got the letter.

Q. And you went back to Adams Express two months later?

A. It was in June. In February I learned the goods were sold. I think so; I am not positive.

(The letter above indicated from Mrs. Judith L. Lamporte to Mrs. Schlessinger, dated New York, April 7, 1870. [Extract.] "About your trunks, you will be obliged to have them removed before the 1st of May." Was read in evidence.

Q. What did your four trunks contain?

Objected to.

A. There was linen——

[*By Mr. Webster.*]

Q. Did you see those trunks packed?

A. I packed them in New York myself.

Q. How long before they were sent over here?

A. In January; I don't remember the day.

Q. And you ordered them over here last April?

A. Yes, sir.

Q. From January to the last of April had you seen them?

A. They had been in my house until I returned here from New York.

Q. But they were in New York from January until April?

A. No; they came here the end of February.

Q. Where were you during the months of January and February?

A. In my house in New York.

Q. When did you last see them before you ordered them from New York?

A. The day before I left New York. I left New York the end of February.

Q. When did you see the trunks preceding the date of that letter from Mrs. Lamporte?

A. The end of February. I cannot remember the date.

Q. Then from the end of February to the date of this letter you had not seen the trunks?

A. No. I left them with Mrs. Lamporte. I packed them in New York with the aid of my son.

Q. Did those trunks have locks and keys?

A. Splendid locks and keys—all patent locks—when I last saw them in New York.

Q. And you know what was in them at that time?

A. I do.

Q. And do you know what was in them when they arrived here?

A. They must have been in the same condition.

[*By Mr. Hirst.*]

Q. When the trunks came on from New York you saw them at Adams Express?

A. Yes, sir. They were in the same condition. Some of them were old trunks, and could not have locks

made for them. Some of them were made in the olden times.

Q. When you saw them in the Adams Express Company's office were they in the same condition as when you last saw them?

A. Yes, sir.

Q. No appearance of having been broken open?

A. None at all. I have got all the keys myself, and they could not have been opened.

Q. What was in them?

Objected to by defendants' counsel.

[*By the Court.*]

Q. Had you the keys of the trunks?

A. I have them still. One of these trunks was sent from Europe in 1783, and they have been traveling since, and there has not been any damage done to the locks, with the same old keys. I have been residing in Europe for some time.

[*By Mr. Hirst.*]

Q. When your son brought the book to you had you given him the key to open the trunk?

A. He had the keys, and the trunk was opened with the key he had. He took the book out and found everything——

Q. What were the contents of the trunks?

Objected to by defendants' counsel. Objection overruled, and exception by defendants' counsel.

Q. Where is Mrs. Lamporte now?

A. I have no idea. By her letter she states she has purchased a little country seat somewhere near New York. She has a son-in-law in Wall street.

Q. In whose charge were those trunks in New York?

A. Mrs. Lamporte's.

Q. Now state what the contents of those trunks were.

A. I had linens in one trunk—the large one. It was an old trunk, about one yard and three-eighths in length, and sizable in proportion. They contained the remains of my trousseau. I had four Silesia damask table-cloths that cost \$300 each, made in Germany. I was offered \$250 for them in Paris.

Q. What was the condition of your family in life?

A. My father was a gentleman of science, and kept his house, carriage and horses.

Q. What gave the contents of these trunks of yours such an unusual value?

A. They were made like satin on one side, and the pattern was dull on the contrary or reverse side. They were very fine linen. I had eight dozen napkins of the same quality, which were worth the same amount each dozen. I was offered \$1,000 in Paris for one table-cloth and twenty-four napkins. A friend of mine wished a trousseau for her daughter. I did not wish to sell them.

Q. What other articles?

A. Then there were sheets and pillow-cases, some finely flounced and some plain, but all fine linen.

Q. Was this list made out under your direction? (indicating.)

A. It was, when the suit was commenced.

Q. What were the sheets and pillow-cases?

A. This suit has been pending some time, and I have been ill, with a low nervous fever, and my doctor told me to forget everything if I wished to live. I do not wish to make a speculation off the Company. I know this list is right.

Q. Do you know whether the Silesia table-cloths could be matched?

A. No, sir. They were made to order as a present from my father to my mother.

Q. Had you any offer for one of these Silesia cloths?

A. I had in Paris.

Objected to

Q. Now about the sheets and pillow-cases?

A. There was one dozen sheets and a broken dozen, containing six or eight. I believe they were worth eighteen dollars a pair. They were large French sheets, three yards square, fine linen. There was about the same amount of pillow-cases, fine linen, and flounced with homespun lace. There were other sheets. I had the best of what was remaining of my trousseau. There was another dozen of linen sheets which must have been worth ten dollars a pair. I had other Silesia table-cloths, I think there must have been a dozen different sizes ranging at prices from forty dollars to seventy-five or eighty dollars a piece. I had a lot worth twenty-five dollars—the ordinary damask table-cloths.

Q. How many napkins were there?

A. About as many as table-cloths.

Q. What was the value by the dozen.

A. More or less the same price as the table-cloths. A dozen napkins were worth as much as one table-cloth.

Q. Were there any Holland sheets.

A. I think there were. I forget how many. I recollected it when I wrote this paper, but I have no memory and no sight now. I am just worn out. I know that I had some French sheets and some Holland.

Q. How many?

A. I have no idea.

Q. What else was there beside?

A. I simply want to make one observation. I have been married twenty-eight or twenty-nine years. This trousseau was made some time ago. My husband died after I had been married three years. My family consists of myself and son.

Q. State what other articles were in your trunks.

A. I had two sets of chamber curtains—they were tulle de Paris, or Persian linen. They were made of cotton, but made to look like silk. The pattern shows on both sides, and the material cost three dollars a yard. There was

material for the curtains of two old-fashioned bedsteads; covering for the sofa and two arm-chairs; they were worth about five hundred dollars. I give the price; I do not remember. My mother bought them in Philadelphia. I know it cost three to five dollars a yard without the making. I don't know how many yards there were. My mother said it, and her word was as good as her oath. Then there was French music with Paris engravings, about five or six hundred dollars' worth. I never played but the very best. Then there were books by French, English, Spanish, German, Italian, Latin and Greek authors—classical books—I do not remember the value of them at the present time. There were something like five hundred volumes. They were contained in more than one trunk. The trunks contained a heterogenous mass—there was a little of everything in them. After my mother died I broke up housekeeping.

Q. Can you tell the value of those books that were in the trunks?

A. I recollect a Greek lexicon I imported for my son. I don't know what the cost was. Some were school books and some Latin classical works—one, I remember of, Barnardy Pierre's works, Paris edition.

Mr. Webster here objected to the plaintiff's counsel refreshing the witness's memory by reference to the list then held in his hands.

Objection sustained.

Q. How many volumes in French and English were there?

A. I do not class them in that way. They were the best European editions—Paris, London, Edinburgh, and so on. I had a beautiful Abbotsford edition of Walter Scott's works that cost five dollars, because they were single volumes. There were two of them. Eighteen volumes cost eighty dollars. I then had a large and beautiful edition from London, illustrated by one of the best artists. I don't know what that cost. I also had the Cheswick edition, by

the same author; also the German work of Schiller and the Italian works of Tasso, Mestazzio and Dante. I had a beautiful and perfect little gem of the Bible for which I paid twenty dollars, bound in velvet and calf. I could not get anything like it here. I had also a French edition of the four Gospels, beautifully illustrated and illuminated.

Q. Any works on natural history?

A. I had some books on natural history. I cannot give you the value of all these. I know the value at which they were estimated.

Q. What was the whole value of your four trunks?

A. I never made a calculation. There were articles that could not be valued.

Q. Well, what else was in your trunks?

A. I had a long mandarin umbrella from Canton, with three handles, which unscrewed. It was made to order, and cost one hundred dollars. I had a little work-box, about the size of my muff, worth something like twenty dollars, with rosewood inlaid. I would not have given it for hundreds. Then there were several chaplets and a Turkish chaplet, and a bottle of ottar of roses which contained about fifty drops, which was worth something like eighty dollars. The bottle itself was very elaborately colored in gilt. Then the trunks contained articles which had come from Europe, given in exchange for presents, and which had been purchased at the Boulevards des Italiennes in Paris. There was a portfolio containing something like two hundred and fifty to three hundred engravings, some worth as high as twenty-five dollars a piece and some not more than five or six; of course not all the same price. There was one I purchased for my son for twenty-five francs. I had the "Madonna" from the painting by Raphael, and "Napoleon on the Alps" by De Boeuff. They were mostly selected by my father and my brother, who were amateurs, and who knew what was good. There was a crayon portraiture of my father, taken in Paris,

which must have cost something like fifty dollars, as it was life-size. I had the copperplate engraving of the same. It was taken by Gerardo, a very expensive artist. There was also an oil painting of myself, taken when I was fifteen years old, and also a painting of Mr. Charles Chauncey, my guardian, worth one hundred and fifty dollars.

Q. What kind of music was in your trunks, what scores of opera?

A. There was a splendid edition of *Robert le Diable*, that cost forty francs in Paris. I could not get another one like it, as there was only one hundred and fifty in the edition, and they are more expensive now than before. I had the opera of *La Dame Blanche*, *Don Juan* and *Zampa* and *William Tell*.

Q. What were the scores of the opera worth.

A. I cannot tell. They must have cost less than *Robert le Diable*, because that is the most expensive piece. I suppose something like five or six dollars a piece.

Q. Were there any manuscript works in the trunks?

A. Yes, sir? There was a French novel I had written, for which I was offered eight hundred francs, and another which I could have sold, not quite completed, for six hundred francs, in France.

Q. This delayed you from going to France?

A. Undoubtedly. I was to have gone last spring.

Q. Do you recollect any other articles?

A. There were a great many articles that were dear to me. I don't know that they were otherwise valuable—family relics and so on. I gave away, before I went to France, four trunks, because I had not room for them. There were also a dozen table knives with carvers, sent from Sheffield; my brother sent them from England. I cannot tell what they were worth. There was also a *chaufiette*. It was of double copper, and fitted in a kind of little footstool.

Q. Was there a cushion?

A. There was a German Eider-down cushion of six or

eight pounds, which was made in Europe. It was worth more but I call it one hundred dollars. There was a table bell I bought in Paris and an English overcoat belonging to my son, costing eight pounds in England.

Q. A spirit lamp?

A. A spirit lamp and all the traveling apparatus for making coffee and tea.

Q. Walking sticks?

A. There were two. I had a small sunshade with a carved ivory handle that cost something like twelve or fourteen dollars.

Q. A photographic album?

A. There was a photographic album, a very handsome present from New York, containing photographs of our friends, and celebrated characters. I had also a collection containing photographs from the galleries in the Louvre, which were very difficult to get. There were from one hundred and fifty to two hundred dollars' worth. There were several portraiture of my son, and two photographs of my mother—a portraiture, in water colors, of my son, taken in Paris, which cost fifteen dollars, more or less.

Q. Was there any article there like combs?

A. I had four combs; one cost seventy-five francs, and the other cost something less—may be ten or twelve. I bought them in Paris.

Q. What were those trunks worth?

A. One of them was lined with linen; a large size traveling trunk, for which I paid thirteen dollars. Two others made to order in Paris; one was perhaps over a yard square—quite high. Those were lined with black tint. I don't remember what they cost. And also another long one.

Q. Describe the hair trunk?

A. It was sent from the Convent de Paris to my mother in the West Indies.

Q. That contained your mother's outfit?

A. Yes, sir. I have handkerchiefs now which are trimmed with lace which she wore. It was a hair trunk, one yard and three-eighths in proportion.

Q. Can you tell what that cost?

A. I cannot. Over fifty dollars would not pay for it. It had two locks.

[*By Mr. Webster.*]

I desire, may it please your Honor, to renew the objection which I have before made to the testimony of this witness before entering upon a cross-examination, upon the ground that the witness's knowledge of the delivery of these trunks to the carrier is not sufficient evidence of the deliverance of these articles which she has enumerated in her testimony, inasmuch as she did not know what those contents were when they were delivered to the carrier; also on the ground of the looseness of the plaintiff's testimony in respect to these articles being in the trunks at the time of the delivery to the carrier.

Objection overruled by the Court, and exception taken by the defendants' counsel.

[*Cross-examination by Mr. Webster.*]

Q. Please describe to the Jury these trunks which you have mentioned.

A. There were four of them. The largest one was one yard and three-eighths in length, was half a yard in depth, and you can imagine the width in proportion. It was covered with hair, had iron clamps, two locks (one brass and the other iron), placed on the opening side.

Q. Now state generally what was in that trunk.

A. Linens and the engravings of which I have spoken, and an umbrella called the "grandmother umbrella," and a small umbrella with an iron handle. There were a few articles that belonged to my father and mother.

Q. Can you state what other articles were there?

A. There was an old coat, one or two linen shirts, with linen cambric frills.

Q. Generally speaking, that was, then, all that ought to have been in that trunk?

A. Yes, sir.

Q. What is the next trunk?

A. It may have been the high trunk, four or five feet high. That was square. It contained the portfolio on the top of the books.

Q. What was in that trunk?

A. It contained choice books.

Q. What proportion of the books was in that trunk?

A. I know I had something like three hundred volumes, more or less.

Q. You said five hundred volumes.

A. Did I?

Q. Describe trunk No. 2.

A. The books and the portfolio on the top. My son packed the trunk. I did not pack it. I was by and looked on.

Q. Can you tell me what was in it?

A. I think this little Cheswick edition of Shakespeare, and that it contained family papers, letters, correspondence, and things that no money can replace.

Q. Do you recollect anything besides what you have described in trunk No. 2?

A. I don't know; there may have been; I don't remember.

Q. Now, trunk No. 3.

A. That was a long trunk. In proportion it was longer than wide or deep. It was a black trunk, covered with this black stuff—an American trunk. It contained books. It is over a year ago, and I did not expect I should be called upon to testify. There might have been music in it. I think the music was in the linen-lined trunk.

Q. Was anything else in trunk No. 3 that you recollect of?

A. I don't recollect. That trunk did not particularly interest me. The trunk No. 4 was an American trunk, for which I paid thirteen dollars, and it was lined with linen. I think that contained most of my music. I had something like six or seven bound volumes. My music was of the very best.

Q. So far as you know, that trunk contained your music?

A. I think it did.

Q. Anything else?

A. It contained that dressing case. If my son's coat was not in the long one it was in that one. It contained my manuscript and my son's manuscript writings, which were exceedingly valuable to him.

Q. State when this packing took place, in which you and your son were both present.

A. It was in February, in New York, at my house. I was keeping my own house, and it was in my front parlor. I lived then in Clinton place.

Q. And after you packed them what did you do then?

A. I went to Mrs. Lamporte's and asked her, and she said they could stay there until the 1st of May, when they would have to be taken away. She is a very creditable and highly respected lady. Her connections are some of the best people in New York. She has a brother there and a son-in-law, named Mr. Juel, on Wall street. I boarded with her when I arrived from Paris, and she had a very well appointed house, in which nothing was lost—not even the breadth of a pin's head. Everything was safe.

Q. When did you return from Paris?

A. Oh, dear me! it seems a hundred years ago. It must have been five years. I wish I was there now. I took these things with me to her house.

Q. How long did you continue to board with her?

A. Three or four months. Her rooms were always engaged for the winter.

Q. After that where did you go to board?

A. To Mr. Fresier's and Antonellie's, and I left my trunks there while I was in Philadelphia prosecuting the suit against my trustee.

Q. How long did you continue to board with Mrs. Lamporte?

A. I arrived some time in the month of June or July, and left Mrs. Lamporte's in October, the same year, five years ago.

Q. Did you take the trunks with you?

A. Yes, sir.

Q. These things were in the trunks?

A. Of course; and then I went to Mr. Fresier, in New York, and these trunks were with me there. I continued there until my son fell ill, probably three months, and then from there I went to Madame Antonellie's and took my trunks there. I remained there until the summer or spring, or May. After that I came to Philadelphia. The trunks remained at Madame Antonellie's.

Q. How long did you remain in Philadelphia?

A. Through that summer, the winter and fall—nearly two years.

Q. And the trunks remained in New York?

A. Yes, sir; at Madame Antonellie's

Q. When you returned to New York what did you do?

A. I traveled for a week or two, and then I took a furnished house for three months and went to house-keeping. Then I had the trunks brought to me.

Q. And the contents of them displayed?

A. Yes, sir; and they were perfectly correct.

Q. Did your friends see all these things?

A. No; I never opened them before strangers.

Q. These things that were in your trunks were suitable for housekeeping?

A. Yes, sir; but I kept them in my house, for I never needed them, as my house was furnished. I wanted to give them to my son when he was married, which, when he does, will be in Europe. They were old relics.

Q. Whilst you were at house-keeping, these valuable articles still remained in your trunk?

A. Yes, sir. I should have been very sorry to have used them. They were not displayed to my friends.

Q. Can you give me the name of any person in New York to whom you ever showed the contents of those trunks?

A. No, sir. I was not in the habit of displaying my things, and the same with my family jewels.

Q. Although you were at house-keeping, you never showed those things?

A. I never showed them to anybody. I had friends from childhood, who never saw my family jewels.

Q. You lived in Philadelphia how long, before you returned to New York?

A. Nearly two years, I don't remember. When I was house-keeping I took a furnished house. I used to use the plated silver which was furnished in the house. It is a common thing, you know, in New York.

Q. Who did you board with in the city?

A. I boarded at Madame Zetelle's, at the St. Lawrence and at old Mrs. ———.

Q. During the time you lived in Philadelphia, these trunks were not here?

A. No. At Madame Antonellie's, No. 1820 Washington Place.

Q. Did you leave them with her after going to house-keeping in New York?

A. I brought them to my house. I remained at house-keeping in a furnished house for three months.

Q. You have seen the trunks at this Madame Lamporte's.

A. Yes, sir.

Q. You formerly lived in Philadelphia permanently?

A. I was born here, and lived here permanently. I went to Europe backwards and forwards with my father and mother. Father died in 1835, and mother died fifteen years after it.

Q. Did you not say in your examination-in-chief that the time your mother broke up house-keeping, these trunks were packed?

A. Yes, sir; the linen trunk was packed.

Q. Where did you keep it after it was packed?

A. I left it in storage.

Q. After your mother's death, and after that trunk was packed, where did you see it?

A. I don't remember. Sometimes it was with me and sometimes I was abroad.

Q. And so it went from post to pillar?

A. Yes, sir?

Q. When was that trunk first removed from Philadelphia?

A. When I went to France I took all my things with me.

Q. These trunks you have described as containing very valuable things, and there is not a human being in New York who, you say, has ever seen the contents of them?

A. Yes, sir.

Q. Has any human being in Philadelphia ever seen them?

A. These belonged to my trousseau, and I never displayed them.

Q. I understood you to say that some valuable articles you have described, were given to your mother by your father at the time of her marriage?

A. My father had them made to order for her.

Q. Can you give me the name of any person in New York or Philadelphia, or of any living person, who ever saw these things?

A. I could not do it. My mother never made any exhibition of her things. She was accustomed to them.

Adjourned.

MONDAY, FEBRUARY 26, 1870.

MRS. MARY M. SCHLESSINGER recalled.

[*Cross examination resumed by Mr. Webster.*]

Q. Did you answer this letter which you received from Mrs. Lamporte?

A. I answered it by sending for the trunks.

Q. In what part of her house were these trunks stored?

A. In the basement, I think?

Q. Anything else stored there?

A. Any amount of trunks. It was a first-class boarding house. Empty trunks were put on the fifth floor landing.

Q. Do you know who had access to that room?

A. The servants. Every one first-class servants. My name was in full on the trunks. No residence on them, but the stamps of the different places I had traveled.

Q. When you saw them at the Adams Express Office, what address was on them?

A. I did not look for the address. I saw the four trunks and recognized them.

Q. Did it not occur to you, to see who had addressed them to Philadelphia?

A. I took it for granted that Madame Lamporte did it.

Q. Why did you not have these trunks sent from the Adams Express Office to your boarding house?

A. Because Mrs. — told me that when she moved I would have to move the trunks again. She thought she was going to move immediately.

Q. You say you saw the trunks at the Adams Express Office some two months subsequent to their arrival?

A. Yes, sir.

Q. They were sold the following December, which made eight months from the time the Adams Express Company received them, until they told you they were sold?

A. I think it was seven months.

Q. During these seven months you never called to inquire for your trunks, except once with your son?

A. They told me they would keep them one year, and every two or three days I would pass the door.

Q. When you and your son called to see the trunks, did you go down in the basement?

A. I did not; I remained in the store above.

Q. Who went down with your son?

A. A colored man. My son got out a book. He went for that book, as he wanted to read a book on the Fourth of July. It was one of—(witness described the book in French). My son did not go out on the Fourth of July, and he wanted a book to read.

Q. Tell me where this clerk of the Adams Express Office was standing?

A. As you step in, there was a counter at the side of the door, and one opposite. I said I wanted trunks brought from New York, and he told me the counter farther on. I said I could not find it, and he instructed a tall colored man to take me there. I told him all the way not to bring me against any boxes. He showed me the place, and there was a young man behind the counter, with whom I held the conversation. I would not know him again, as I am near-sighted. I told him I wanted to have trunks brought from

New York. Recollect, I do not repeat this verbally, because it did not strike me then that it would be necessary to repeat it. He told me it was a very easy thing, and required to know the number of trunks. I told him they were in a boarding house. He said, "perhaps they will be unwilling to give them up." I understood him to mean that they would be detained for rent. I showed him this letter from Madame Lamporte, and he said at once he would attend to it. He told me to call in a few days, and the trunks would be in the office.

Q. You simply told him there were four trunks?

A. Yes, sir. I did not give him any knowledge of the value of the trunks. I simply stated four trunks that were in the boarding house.

Q. Did you give any order on Madame Lamporte to deliver those trunks?

A. That I don't remember. If it was customary to do it, I did it.

Q. At that time did you ask what would be the charge for bringing these four trunks?

A. Perhaps I did. I don't remember.

Q. If you did, what did the clerk say would be the charge?

A. If I did, he said eight dollars.

Q. You have told us of some conversation between you and one of the clerks, in which you were told the charge was eight dollars?

A. This was when I returned.

Q. Did the conversation take place between you and the same young man?

A. It was a young man at the same counter.

Q. On that subsequent visit, state what conversation took place between you and the young man, in which he appeared to have stated the charge was eight dollars?

A. When I called and saw the trunks I was not certain whether I would remain at boarding or return to New

York, and that it was inconvenient to me to have the trunks at home just now. I asked him if he would keep them for me, and he said he would. I asked "what storage will you charge?" He said, "we are not allowed to take any storage." I handed him a ten dollar note and said, "shall I pay you now." He said, "time enough when you take them away." I asked him "how long will you keep them for me?" He said, "one year, no longer."

Q. What did you hand him the ten dollars for?

A. To pay the freight, which was eight dollars.

Q. Did he tell you that at that time?

A. Perhaps he did. If he did not tell me before, he must have told me then?

Q. And at that time did you tell him the contents of the trunks?

A. No.

Q. Why didn't he take the eight dollars for the freight, as there was no charge for storage?

A. That I don't know. He told me "time enough when I took the goods."

Q. And although the Company had carried the goods, yet they would not take money for the carriage?

A. That I don't know.

Q. What kind of a ten dollars was it?

A. It was one of these ugly green things. It was not regular gold and silver.

Q. And he refused to take it?

A. He said "time enough when you take them away," and then I left.

Q. State what conversation took place at the time when you and your son went there?

A. It was in the neighborhood of the fourth of July. My son asked me in French, "are you sure he is going to keep them?" I said I will ask him again. I asked him the same question, and asked him if he would retain them on storage, and he said he would not take any storage.

Q. Did not the young man tell you on every occasion that the utmost limit they kept goods awaiting owners, was three months?

A. No, sir. Not on my solemn oath. When I called and found that the trunks were sold, of course I was struck with horror and dismay. The gentleman at the first counter, near the door, told me. I asked him who is the party who has acted so irresponsible. He told me he had no right to keep the goods. He said Mr. Gorman.

Q. Did he tell you Mr. Gorman was the Assistant Superintendent?

A. He said "Mr. Gorman." I said I wanted to see Mr. Gorman and he brought me up to the desk. He arrived before I did, and I said a few words to him; I was a little hasty, and I told him when I learned that my trunks were sold that he had committed a fearful mistake, because those trunks were so precious to me that I would have dragged them on the pavement myself rather than have left them be with the chance of being lost.

Q. That occurred between Mr. Gorman and yourself in the presence of others?

A. Yes, sir.

Q. Did they tell you they were sold under an order of the Court of Common Pleas?

A. Nothing of the kind. Mr. Gorman told these other gentlemen that he had told me he would keep them three weeks, and I said it was a falsehood, that, had he said so to me, I never would have left them if I had to drag them myself on the pavement.

Q. Yet these things were so precious to you, that you did not want to make use of them for household purposes?

A. Yes, sir.

Q. And constantly you kept them locked up?

A. Except when I aired them, which was every now and then; sometimes twice a year.

Q. You say these things were kept sacred?

A. Of course. We did not use our linen in boarding houses.

Q. Explain what you meant when you told us distinctly that in February last, when you last saw them, that you and your son packed them together?

A. We had them brought into a large front parlor of my house, unpacked them thoroughly, aired them, and packed them again. That was to air them, for they would have grown musty. That was in February, the very time to do it.

Q. Who took the trunks up to Madame Lamporte's?

A. A man we always employed.

Q. When had you previously aired and packed these things?

A. Previous to leaving France. I might have unpacked them since.

Q. And in the meanwhile they had remained in those trunks?

A. Yes, sir.

Q. At the time you aired them in New York, did anybody see them?

A. Nobody was in the room, only my son and myself. There were two servants and a little girl in the house.

Q. Did they ever see them?

A. No, sir.

Q. You cannot name a human being that ever saw them?

A. Nobody saw them on the table, because they were never used.

Q. Did you never show these things to your friends for the purpose of pride or pleasure?

A. I have been accustomed to them.

Q. Is there a friend or relation living, who ever saw them in your possession, in this country?

A. I would consider myself to be shoddy to exhibit my goods. These goods were in my family before I was born.

Q. You stated you had a bottle of attar of roses, which was worth eighty dollars?

A. Yes, sir.—Fifty drops.

Q. How do you know there were fifty drops?

A. I was told so by different parties. It was sent to me as a gift from Damascus. The bottle was long and narrow, and made of cut glass, and had a camel-skin cover. I had it in my possession ten or twelve years. I never used any of it. It was a gift and I prized it. When I wanted oil of roses I bought it.

Q. Where were these trunks when you were in Paris?

A. At one time they remained four years in the Hotel des Brittanique, and then at the Hotel de L'Europe, at Havre, for several months.

Q. What proportion of those fine linens belonged to your father and mother?

A. Those four sets. These were four Silesia Damask table-cloths, worth three hundred dollars a-piece,—

Q. How do you know they were worth that?

A. From what my mother told me.

Q. You only know they were worth that from what your mother told you?

A. Yes, sir. She said they were worth that. I was offered in Paris, by a Russian lady, who was making a trousseau for her daughter, one thousand dollars for a table-cloth and twenty-four napkins. She had seen them, of course. I showed them to her, and she wanted them. I would not sell them, as I wanted them for my son.

Q. How many sheets had you in the trunks?

A. I had one complete dozen, and a broken dozen, and another dozen of Holland. These were the remains of my trousseau. I value the sheets at eighteen dollars a pair. Those table-cloths were made for my mother. My father's name was Keitz. He lived in this city for a number of years. My mother traveled a great deal to Europe, and my father's death broke her down completely. The other table-

cloths were worth from forty to eighty dollars a-piece, with napkins to match. The chamber curtains were of Tulle de Paris, those my mother got for me when I was married. She furnished my two rooms in this city. They were made of a material that looks like silk, of linen and cambric; I don't know where she bought them, but I cannot get the like now. The covering for the sofa and the arm-chairs was of the same material. The material costs from three to five dollars a yard. The patterns were very handsome. All together they were worth five hundred dollars. I had three piles of good music; some was old,—

Q. How is it that you estimate your music was worth five or six hundred dollars?

A. I had very fine editions of operas, and valuable music.

Q. Where did all the books come from?

A. Some of them are part of my father's very valuable library. He was a man of science and wealth. I had five hundred volumes in all languages, and of the best editions. I had no relatives here to leave the trunks with.

Q. Did anybody ever borrow those books from you?

A. No; I am not fond of lending my books. I showed them, of course, in Paris.

Q. Did anybody on this continent ever see them?

A. I don't know. They were all good and handsome books. I had them in my bookcase in Paris. In this country they were in the trunks. We needed very few of them at a time because we have been on the wing.

Q. You did not keep that Oxford Bible locked up?

A. No; I gave twenty dollars for that. You will see books inferior to that worth eighteen dollars. There was a lady who saw it. I purchased it in Philadelphia.

Q. Was there anything else in that collection which you purchased yourself?

A. I bought a Greek lexicon some years ago for my son. A great many of the books were imported from

France. It would be difficult to buy them. The Abbotsford edition of Walter Scott I bought at Hart's. I paid five dollars each for the two volumes. The mandarin umbrella had a handle in joints. I cannot tell how long it was in my possession. It was a present to me. It unscrewed in three parts. It cost my mother one hundred dollars. I saw the bill. It was made in Nankin. It was not made for use. The little work-box cost twenty dollars. I had a chaplet which was presented to me on my first communion. Then there were two hundred and fifty engravings, more or less. I said they were worth from four to twenty-five dollars. Some of them were in my father's portfolio. I purchased for my son an engraving of "Madonna" and "Napoleon in Egypt." I had an oil painting of myself and of Mr. Charles Chauncey. I was the best musician at one time in Philadelphia. I am not engaged in any business. I took my first music lessons of Madame S——. I composed the two novels of which I have spoken. I was offered eight thousand francs for them. I submitted them to Mr. ——, in Paris.

Q. Did you ever read these novels to any person in this country?

A. I did, but the old lady is dead. I used to read her chapters. That was before I went to France. I composed some poems, and a lady used to steal them.

Q. Do you think these novels were in the trunk?

A. I know they were. They were children of the brain, and I became attached to them. I had a photographic album, containing a great many celebrities, with photographs of friends of mine. The album was a Christmas present; did not contain the likeness of any friend in this country. It contained pictures of the royal family in the revolution. I have no idea of its value.

Q. When they told you these goods had been sold, did Mr. Gorman, or the other young man, tell you what they found in the trunks?

A. No. I told them, "is it possible that for eight dollars you have sold trunks that contained thousands and thousands of dollars worth of goods." Then the gentleman near the door asked me why I did not tell him they were worth so much. I told him I did not think it was necessary. He told me they had been sold at Martin's, the Auctioneers. I went there. It was a fearful day. I saw they just had a sale, and I insisted on his looking in his books to see if they had been sold. He said he would do so and to come again. I went the next day and the next day; and at one time the father was going to tell the son and the son was going to tell the father, and I never heard anything of any trunks.

Q. At this conversation, which occurred at the Adams Express Office, did you tell one of the clerks that their contents was worth four thousand dollars?

A. I did not.

Q. Did you tell him that they were worth two thousand dollars?

A. No, sir.

Q. When you returned from Europe, you remained in New York?

A. I did.

Q. When you brought those trunks from New York to Philadelphia the first time, how much freight did you pay?

A. I have not the slightest idea.

Q. Did you in any of your travels ever pay extra freight for the extra weight of these trunks?

A. That I don't remember. Very probably I did. I never asked what it was for.

[*By Mr. Hirst.*]

Q. Did you ever find out to whom your trunks had been sold?

A. Never.

JOHN NIXON, sworn for plaintiff.

[*Direct examination by Mr. Hirst.*]

Q. You were in the employ of Martin's, the Auctioneers?

A. Yes, sir. I was with them three years. I don't know anything about the firm now. They stopped business along about last March.

Q. State what you know about these trunks, which you heard described in this case?

A. We had a sale of Adams Express unclaimed packages, and amongst the lot we had several very large sized trunks. My particular attention was called to the trunks by their size and their being marked with some foreign labels, either Havana or Havre. I had a notion of buying the trunks myself. I thought they must have been pretty valuable. I judged from the heft of one of the trunks that it must have contained books or papers. I understood my bosses to say they were bought in for the Express Company, whether so or not, I can't say.

Q. Were they opened before they were sold?

A. Not that I know of. I did not see them opened. Each trunk was sold separately.

Q. What was in the trunks, nobody knew?

A. No, sir. I recognize the plaintiff. She was at the store several times. She had an interview with my bosses most every time she came there. She would wait when they were out, but what the interview was I could not say. My bosses were Robert Martin and Thomas P. Martin. The last I heard of them they were in Chicago.

[*Cross-examination by Mr. Webster.*]

Q. Where are you employed now?

A. Not employed any where permanently. I am working for myself. I live No. 330 Griscomb Street.

[*By the Court.*]

Q. When were these trunks sold?

[*By Mr. Webster.*]

Twenty-ninth and Thirtieth of December, 1870.

RUDOLPH SCHLESSINGER sworn for plaintiff.

[*Direct examination by Mr. Hirst.*]

I am thirty-two years old. It was the last week-day before the fourth of July; I had no intention of going out on the fourth of July, and I wanted to get a book, and I went to Adams Express for the first time in my life with my mother. I walked with her to the desk, where there was a young gentleman. She asked him if I could have access to those trunks. He asked her name and the date of the arrival of the trunks. She gave her name, and said they were sent for the last few days of April. He looked on his register, and called out "four" with numbers, I presumed they had affixed to the trunks. A colored man took me down to the basement to see the trunks. There were a large number of trunks there, and amongst them were ours. I recognized them perfectly well. I opened one trunk and took out a book, a volume by —— which I had occasion to read. The trunk had a tray, and I found everything in the same condition I had left them. I did not examine it—I looked in with a glance. This book was at the left hand corner. I then closed the trunk and lifted the handle to see if it was closed, and I left it locked. I looked at the exterior of the four trunks to see if they were in good order—to see if the locks had not given away—I was satisfied they were in good condition. I had no occasion to open them. Externally they were in the same condition. I think this colored man made some remarks about the weight, but I can't swear to it. They were always remarkable for their weight, and caused great difficulty with porters in

moving them. I asked my mother in French to ask this party at the desk if he would keep these trunks. She asked him again, and he said "one year—no more," or "no longer." My mother then asked him if she should settle then for the freight. He said it was perfectly indifferent. At a later period my mother went around there, and told me the things had been sold. I saw the trunks last, before I saw them at Adams Express, the very last week in January, 1870, the 26th or 27th. My impression is we left New York on the 29th of January, and I saw them the day before that. I made this list of the contents of the trunks in the month of April or March, 1871. I made no list at the time I helped to pack the trunks. I made this list from memory.

(The witness here went on and enumerated what he alleged the trunks contained.)

[*By Mr. Webster.*]

Q. Do you deal in music?

A. No, sir.

Q. Have you any knowledge of the selling price of music?

A. From two stores in New York, Mr. Schubert and ———. That is all.

[*By Mr. Hirst.*]

Q. Can you tell the value of this music?

A. It would cost four hundred and fifty to five hundred dollars to replace the same, according to what Mr. Schubert said to me.

[*Cross-examined by Mr. Webster.*]

I am in no business in this country. I have been writing for different magazines and papers in France; I have property in France invested; I lost a great deal by

the European war ; I left France July 10, 1859, and arrived on the 25th. My mother was with me.

Q. And from '59 to the present time you and your mother have been living in Philadelphia and New York ?

A. Yes, sir. I heard her testimony ; I never showed my books to anybody ; I always kept my doors locked ; I was born in this city and lived many years here ; I did not go to school here, I studied at home and saw hardly any society at all.

Q. You then lived like hermits ?

A. Very nearly. I have no relations here.

Q. Can you name any friend or relative, either of yours or your mothers, that has ever seen these things in Philadelphia or New York ?

A. I don't think so. I have not been settled in this country ; we arrived from France ; then went to Philadelphia, in Waverly Place, corner of Marcer, and had the trunks brought there. We went then to Mrs. Laportes and took the trunks with us. We then went to Freisiers, and then to Antonellies, at the corner of Washington Place, and took the trunks there, leaving them in Madame Antonellies care. We then staid in Philadelphia a while, and then returned to New York, the tenth of October, 1869. The trunks were with us until they were sent to Mrs. Lamportes, the day before we came to Philadelphia, until they were taken by the Adams Express Company. We lived in a furnished house in New York. The trunks were kept in the front parlor at one time, and another time in a space under the main stair case.

Q. It is from the packing of the trunks on the day before you left New York, that enables you to give this long list from memory of the contents of the trunks ?

A. No. I knew the greater part of these articles years and years ago. I recognized them and my memory was thus refreshed.

Q. Had you ever made a list before ?

A. Yes, sir.

Q. Where is it?

A. In the trunks with the other papers, locked up. I simply made a list and left it in the trunk, so that I could find such a thing there.

Q. Did you keep the list in your possession in case the trunks were stolen?

A. I never did.

Q. How is it your memory is so good?

A. I used to be a very great reader. The first impressions I had were connected with these books.

Q. You depend upon your memory as a boy to recollect these things?

A. My impressions were a great deal stronger then than now.

Q. What languages do you understand?

A. I have learned Latin. I did read Tasso. I do not try now. I read German with great difficulty. I might possibly read Spanish. I commenced Italian, but did not make much progress.

Q. And with this limited knowledge of the different languages you speak so specifically of the value of these books?

A. I know what they are worth.

Q. Who has had that list since you made it out?

A. Mr. Todd. I have had the paper in my hand since I made it out, but have not examined it.

Q. How often have you read it since?

A. Three times.

Q. How often in this year?

A. Not that I know of—not to read it through. I had no occasion.

Q. When did you have it last in your hands to read?

A. I don't remember reading it over at all this year. I have not examined it this year?

Q. Did you not examine this list last Saturday?

A. No, sir.

Q. In whose possession has this list been since last Saturday?

A. I really don't remember. I left it with Mr. Todd.

Q. Have you had it?

A. Possibly. I do not deny it.

Q. Have you had this list in your possession from Saturday until Monday morning?

A. I really don't remember.

Q. Didn't you produce it here this morning?

A. Yes, sir. I had it this morning in my hands. I might have received it from Mr. Hirst or Mr. Todd. I don't recollect.

Q. Didn't you read this list over yesterday to refresh your memory?

A. No, sir. I was obliged to pack yesterday. Fortunately my trunks were not all in the Adams Express office. I am changing my boarding house.

Q. You said your mother had a conversation with the young man in the Adams Express Office, and the young man said the trunks could stay there a year?

A. Yes, sir. I would not recognize the young man.

Q. And yet you told your mother to ask him in French the same question again. What was your object?

A. We always speak together in French—having two languages at our command.

Q. Why didn't you ask the young man?

A. It was none of my business. She had made arrangements with him. My object in asking her to do so, was simply to know whether it was so or not. The question was as to how long he would keep her trunks. I suppose, "How long did you say you would keep my trunks?" I wouldn't swear to the words. He answered, "One year, no more," or, "no longer." I opened the American trunk, lined with linen. The book was at the left hand side. There were

three books tied together in a parcel. There were books, music, and a heterogeneous mass in the trunk.

Q. How many volumes were there?

A. Three hundred. There were other articles in that trunk. I opened the trunk only for a minute, and then I closed it up.

JUDGE PIERCE, sworn for plaintiffs.

[*Direct examination by Mr. Hirst.*]

Q. Are you acquainted with the plaintiff, Mrs. Schlesinger?

A. Yes, sir; with her family I suppose twenty-five years.

Q. State whether she was a lady of wealth?

Objected to.

Mr. Hirst stated that his object was that he desired to prove by this witness that she had been a lady of wealth, and in good circumstances, and that the goods contained in the trunks were such as is possessed by people in similar circumstances in life.

Objection overruled and exception by defendants' counsel.

A. As far as my recollection serves me, Mrs. Schlesinger had a considerable estate. I cannot state with accuracy the amount of it; but her estate was in trust; her trustee was Dr. Hartshorn at the time I was acting as counsel for her. My impression is that she had a trustee previous to that. I do not know whether Mrs. Schlessinger's counsel received some of the trust money. I did not know her father. I think I have been introduced to her mother.

[*Cross-examination by Mr. Webster.*]

Q. Did you ever see the deed of trust.

A. I am not certain whether I have seen the original deed of trust. I think a copy was furnished. It was a trust to herself for life, with a remainder to her children.

Q. What was embraced in the trust.

A. It was part personal estate, stocks, loans, etc. I do not know accurately the income, but my impression is about the time she applied to me to obtain some money under the trust, that it was in the neighborhood of twenty thousand dollars. Some portion of the estate had been received from the trustee, some eight thousand dollars.

Q. That left the principal twelve thousand dollars?

A. If the figures are correct.

Q. When did this matter of trust come under your notice?

A. I think in 1855. I was applied to as counsel. Mr. Thomas H. Mitchell was conducting her business, and he died in Europe in 1859, and from 1855 to 1859 probably was the period when I came to act as her counsel.

Q. During that time what was her income, so far as you are able to say from this trust estate?

A. I cannot say accurately, because I had nothing to do with the income. My effort was to obtain a portion of the principal of the estate; and I succeeded after taking it to the Supreme Court.

Q. Was her income from 1855 to 1859 upon a principal of eight or ten thousand dollars?

A. I cannot say accurately. I know that Mrs. Schlessinger did receive from time to time a very considerable sum of money out of her trust estate. I was not accustomed to visit her. She came to my office. She was a lady of fine social position.

Q. Did she ever show you any valuable articles of virtu?

A. No. I never visited her at her residence.

Q. Did you ever hear of her having possession of such articles?

A. I heard from Mrs. Schlessinger. I won't say that I have not, but I have no distinct recollection.

Q. During the time that she was consulting you was she in need of money?

A. Mrs. Schlessinger generally spent as much money as she could get.

Q. Did you ever know her to be in need of assistance?

A. She always wanted more money than her income. She managed to get it somehow or other.

[*By Mr. Hirst.*]

Q. Do you know the whole amount of the estate of her father?

A. I don't know of my own knowledge. I have heard it was very considerable.

MRS. SCHLESSINGER recalled.

[*By Mr. Hirst.*]

Q. What was the whole amount of your father's estate?

Objected to. Objection overruled, and exception taken.

A. It was something like eighty thousand dollars in property and twenty thousand dollars in silver plate and jewelry.

[*Cross-examination by Mr. Webster.*]

Q. This property was all covered by a deed of trust?

A. It came to me by my father's will, leaving it in trust for me. My mother was trustee and my two brothers. They received the property in trust. There was no inventory made. My father desired there should not be.

Q. After them who was the trustee?

A. My half-brother, who was in Europe, was made to decline the trust by the intervention of my elder brother and my mother, leaving everything in the hands of my

brother, and my property slipped from my hands. Dr. Hartshorn was appointed trustee before we went to France.

Q. What was left when he was appointed trustee?

A. It was reduced to twelve thousand dollars at one time.

Q. At the time you went to Europe how much was it then?

A. About twelve thousand dollars. My suit against Dr. Hartshorn was to get the property, and I got what was left of it, which was only a few thousand dollars. I do not know when I got that. I came from Europe expressly to do that.

Q. Then from 1867 to 1869 you got back the remaining few thousand dollars?

A. Yes, sir.

Q. Now, of all this property you have mentioned, none was purchased out of this money? Most of it was obtained from your father and mother?

A. Yes, sir, but from no one else. My means at present are nothing at all. Except for the property I have in France I would not have had butter to put on my bread. At present, of course, I could not think of purchasing anything of that kind.

MR. WEBSTER OPENS FOR DEFENDANTS.

ARTHUR O. GRANGER sworn for defendants.

[*Direct examination, by Mr. Webster.*]

Q. Are you a clerk in the Adams Express office?

A. I am. I have charge of the unclaimed packages and undelivered freight. I have been there about two or three years. I know the plaintiff, Mrs. Schlessinger, by sight, and I have seen her son also.

Q. State your first interview with this lady.

A. My first interview was in the latter part of April, I should judge. She came to my desk and stated she was expecting the receipt of some trunks from New York, and said that she expected them to arrive the latter part of the week, and that she merely came to give me notice that she expected them. She said she would call again. She did call again on the 28th, the trunks having arrived in Philadelphia on the 27th, and were lying on the platform at the end of my desk. She recognized them after handling the trunks, and I asked her what she wanted done with them. She said she was boarding, and had not room to take them to the boarding house. She said she hoped to go to house-keeping in the course of two or three weeks, and that she would call again and let me know where we should deliver the trunks. She did call, I suppose, inside of two months. I think it was nearer a month; and she said she had not been able to get any house that suited her, and was still boarding, but that she hoped to get a house in a very short time. This was the third time I saw her in the office, and her son was with her.

Q. About what time was that after you received the trunks?

A. In the neighborhood of a month. She stated that she wanted to get something out of the trunk. I don't remember whether it was a book. I thought at the time it was some article of wearing apparel. I allowed her to do so, and called the porter, Henry Allen, and gave him the numbers of the trunks. We have numbers for each article on hand so as to designate them. In giving him the numbers of the trunks, I told him to go with them. The young man and the lady both went into the cellar with the porter. They were both in the cellar a little while, just about long enough to get the article and come back again. They came out of the cellar together. The porter reported that she had gotten the article out of the trunk. Her son remained about midway between the cellar door and my desk, just

about, I judge, twenty feet, and the lady came to my desk alone, and stated she thanked me for allowing her to get the article out of her trunk, and was sorry she had not been able to take them away before that, but hoped to get a house in a very short time, when she would call and let me know where to deliver them.

Q. The conversation took place between you and her at the desk?

A. Yes, sir.

Q. How far off did the son stand?

A. Fully as far as from here to the corner of the room. It was impossible for him to hear the conversation. The conversation was held in a moderate tone of voice.

Q. Did she at that time ask you how long you would keep these goods in store?

A. She did not.

Q. Did she at any time?

A. She did not.

Q. Did you tell her you would keep them for a year?

A. I did not.

Q. Have you any authority so to do?

A. I have not. Our custom ——. Objected to.

Q. Did you ever tell her you would keep them for a year or any less time?

A. Never. I am positive of that.

Q. Had you any authority as a clerk to make any such promise?

A. None whatever. My instructions are whenever a person asks any such question as that ——

Objected to. Objection overruled.

[*By the witness.*]

My instructions are to state that we will let the goods stay in storage for ninety days, and at any time after that, if the consignees do not call, we have the privilege of selling them for freight. Those were my general instructions, and were printed on our notices.

Q. Had you any authority, either expressed or implied, at any time, to give any assurance to keep goods longer?

A. None whatever. I never gave any such promise to this lady.

Q. If you had done any such thing was it within the line of your employ?

A. It would have been done entirely outside of the limit of my authority. I am positive I never said anything of the kind.

Q. At that time did she give you her address?

A. She did not?

Q. Did she tender you at any time the freight for carrying these goods?

A. Not at any time.

Q. Did you ever see any money in her hands?

A. No, sir. I am positive of that.

Q. Did you inform her what the freight was?

A. Yes, sir. The first day she was there I footed up the total, and found it was eight dollars, and I told her so. That was the day of the arrival of the trunks.

Q. Did she at that time exhibit any money?

A. She did not, nor tender any.

Q. Did you see a ten dollar bill in her hand?

A. I did not. I would have taken the freight if she had tendered it.

Q. Did you say it would be time enough to pay the freight when she took the goods away?

A. I did not.

Q. Could you have said such a thing, and not remember it now?

A. No, sir.

Q. How long was she and her son down in the basement with the porter?

A. Only a few minutes. Just a short time, about long enough to open the trunks and get something out. I

remember distinctly seeing both, Mrs. Schlessinger and her son, go down into the cellar in charge of the porter.

Q. Did she say in leaving when she would be likely to take the trunks away?

A. When she left me, my impression was she was going to get a house in a few weeks, and would let me know where to send them. That was my idea when she left, and I did not see her again until the goods were sold. They were in our office eight full months, stored in our cellar, where we place boxes, bundles and trunks. The cellar door is locked and no one enters it unless by my direction. It is safe, as no one has access to it without application to me or to Mr. Gorman, the agent. It is a proper and safe place for the custody of goods. We have a watchman there at night, and during the day the entire establishment is under the observation of the employees.

Q. Other people's goods are stored there?

A. Yes, sir.

Q. What was the basis upon which that freight of eight dollars was charged on these trunks?

A. The rate is seventy-five cents a hundred pounds from New York, and the trunks weighed in the neighborhood of seven hundred pounds. There was a charge of two dollars paid out in New York for the local express, we presumed, in bringing them to this office.

Q. You received them, then, from the local express?

A. Yes, sir.

Q. This lady has said that she applied to you, when you said you would send over to New York for them for her, and that you said you could get them, and that she then showed you Madame Lamporte's letter. Did such a thing occur?

A. Not at all. Her testimony is entirely new to me. I never saw that letter. No such conversation took place. I did not send for the boxes. They came into our possession from New York. She told me she expected them to come.

If the contents of these trunks were of a character which she has described we would not have allowed them to remain in the office a day without compelling them to take them. She at no time disclosed the value of them to me, and I never told her that we would keep them for a year.

Q. Did she disclose the value of them to you when you told her you made no charge for storage?

A. No, sir. I was not present at the sale of the trunks, but the total was thirty-three dollars.

Q. Was this order of the Court for the sale of the goods executed by hand-bills and so forth?

A. Yes, sir. They were printed, and advertisements were put in the newspapers as required by the order of the Court.

Q. What conversation occurred between you and Mrs. Schlessinger after the sale?

A. She called one or two months after the sale and asked me about her trunks. I told her they had been sold, in accordance with our custom of selling unclaimed packages to pay the cost of the freight. I told her of the notices of the newspapers and the notices printed on the hand-bills. She expressed her regret that her trunks, which she valued at two thousand dollars, should be sold for the payment of eight dollars freight. That is all I remember of the conversation. She did not say what was in them. I remember that she said there was some manuscripts and household things in them. She said it was a great pity that two thousand dollars' worth of her property should be sold to defray eight dollars freight.

Q. Did you make any effort to obtain the name of the purchaser?

A. I did not go myself to Martin's, but there was an effort made to find the purchaser.

Q. You have seen these trunks and have heard the description given by the plaintiff of their contents. As a matter of judgment, would these trunks have been sufficient to contain all which she has described?

A. I think not. I never examined them myself. One of the trunks was in good condition; the second one was rather rickety, and the third and fourth were decidedly shabby looking trunks. They had to be tied together to keep the contents in. The locks and hinges also were in bad order, and if I had chosen, I could have taken things from the inside without untying the ropes.

Q. Did they come to the office tied with ropes?

A. They did.

Q. And when they were delivered to you, in Chestnut street, they were in bad condition?

A. They were.

Q. You have heard her description of these trunks?

A. Yes, sir. I do not remember distinctly about them, but I remember there were four trunks, and I think they were all rickety looking affairs, except one.

Q. How often did you tell her the freight was eight dollars?

A. I think only once. The day after the arrival of the goods.

[*Cross-examination by Mr. Hirst.*]

Q. Did you see what was contained in those trunks?

A. I did not.

Q. Did you make a contract to convey those trunks from New York to Philadelphia?

A. No, sir. I don't know what that arrangement was. I don't know who made it, or its terms.

Q. The first you saw of the trunks was in the Adams Express Company?

A. Yes, sir. She told me she expected them.

Q. Did you see these handbills put up?

A. I saw at least eight or ten of them around our office, inside and outside, so that parties passing by could see them. They were on the front doors, and pasted inside, near my desk. I saw them in the auction store window,

and in front of the store, and at the depot office, Eleventh and Market. We had two depots to receive freight. The main one is at Eleventh and Market. Freight that is to be sent for is sent to the Chestnut street office. The Market street depot is under the Bingham House. The Chestnut street office is the size of a Chestnut street store, and is quite deep.

Q. Do you know how long these trunks were at the Market street depot?

A. They came on the Twenty-seventh, and were sent down the next day to our office, about ten o'clock.

Q. When this plaintiff told you that it was inconvenient for her to take the trunks, did you tell her to take them away?

A. Not at all.

Q. Did you ask her for her residence?

A. I did, and where she wished to have the trunks sent.

Q. Did she give you her residence?

A. She did not. She stated she was boarding and it was inconvenient for the lady owning the boarding house to receive the trunks, that she wished to go to house-keeping, and that she would let us know.

Q. Did you ask her at all where to send the goods?

A. She said it was inconvenient to have them sent. I had no occasion to ask and I did not ask.

Q. You are aware that it is the duty of the carrier to deliver the goods?

A. Yes, sir.

Q. And you did not tell her to take them away, or enquire of her where to send them?

A. I complied with her request to keep the goods for her, merely to accommodate the lady.

Q. You said there was an arrangement in your establishment to keep the goods three months?

A. I do not know that we have any notice here. It is posted in the office, and is on the freight notice.

Q. When she first said it was not convenient for her to take them right away you did not object to that?

A. No, sir. When persons make such a request we try to accommodate them.

Q. When she came the second time she made the same request?

A. Yes, sir; still requested me to keep them still longer.

Q. And you also complied with that request?

A. Yes, sir.

Q. And agreed to keep them?

A. Yes, sir.

Q. Any time mentioned?

A. No time. She said in a very short while.

Q. What did you say?

A. I said I hoped she would be able to do so soon. When she did find out, to let us know as soon as possible and then we would send the goods. That was the understanding, and she was to do it in a very little while. The little while, as I understood from her conversation, would not have exceeded a couple of weeks.

Q. Didn't it occur to you then about that three months arrangement?

A. No, sir, because we merely notified people in that way to come for and claim the goods.

Q. It was then within your knowledge that the goods could be kept only three months but you did not tell her, did you?

A. No, sir, we had no conversation on that point. I had no occasion to tell her anything of the kind, because she said she would send for them in a short time.

Q. You did not tell her that it must be within three months?

A. No, sir.

Q. You did not tell her it must be within a year?

A. We had no conversation on that point whatever.

Q. The two different occasions you left it unlimited in point of time and that you would keep them in the meanwhile?

A. The meanwhile was a very short time, she said. If she had given me any idea she intended to have kept those trunks in the office that length of time, we would not have kept the trunks.

Q. Did you tell her that the time was limited to three months or any other number of months?

A. No, sir. I stated nothing of the kind.

Q. There were two months between this and the time the goods came?

A. I don't think it was two months. I think it was early in June. I am not certain about the month.

Q. You said you didn't think those trunks contained all those articles?

A. I should not think so from the enumeration of them.

Q. How would you distribute that seven hundred pounds?

A. Paintings don't weigh very much. I am not familiar with the weight of table-cloths and napkins.

Q. Why did you give an opinion?

A. From the number of the books, etc.

Q. Was it not the rule of the Company, prior to this Act of Assembly, to keep goods in store for a year?

A. No, sir.

Q. How long have you been at this desk?

A. Between two and three years. I went there in May, 1869. I was formerly connected with Harnden's Express.

[*Re-examination by Mr. Webster.*]

Q. This notice to people to come and take their freight, you say, has printed on it a notice that you will not keep it longer than three months?

A. We have notices printed stating that we will keep the goods ninety days, and if not called for within that time they will be sold for charges.

Q. To whom are those notices sent?

A. To the consignees.

Q. When you receive goods, and the consignee does not call, it is your practice to send them such a notice?

A. Provided they do not know the goods are in the office.

Q. Whenever the consignee does not know the goods are in the office you send them these notices that these goods are there, and that you will not hold them for more than three months?

A. Yes, sir.

Q. And the reason you did not send the plaintiff notice was because she knew the things were there?"

A. Yes, sir.

[*By Mr. Hirst*]

Q. How often did you hold these auction sales?

A. Once a year generally.

The defendants' counsel here read in evidence the petition of the Adams Express Company to the Court of Common Pleas, dated November 19, 1870—among the list of articles mentioned being four trunks belonging to Mrs. Schlessinger—and also the order of the Court.

Objected to. Objection overruled. Exception by plaintiff's counsel.

H. W. GORMAN, sworn for defendants.

[*Direct examination by Mr. Webster.*]

Q. What is your position in the Adams Express Office?

A. Agent, and have been about ten years. I have been in their employ since December 23d, 1842, when the Company started. I am familiar with the authority of the different clerks connected with the establishment.

Q. Has Mr. Granger, a clerk in the employ of the Company, any authority to tell a person the Company would keep goods on storage for a year?

A. No, sir, nor any other clerk. Their instructions do not authorize them to keep goods over sixty days to three months. That is the custom of the Company. I have heard the testimony of the plaintiff in this case.

Q. If Mr. Granger told her what she stated, did he exceed his authority?

A. He did.

Q. Had any other clerk authority tell her that?

A. No, sir. I superintended the sale of things mentioned in the order of the Court. There were twenty-five hand-bills printed, and an advertisement of sale put in the "Inquirer" for three successive weeks. I saw the hand-bills in front of our office and inside, and in the auction rooms, and on the windows of the auction store—in five different places. I did not attend the sale, but the sale took place. I never saw the plaintiff before the sale, and I never had any conversation with her until after the sale.

Q. Before the sale did you examine these four trunks?

A. I did. I examined them with Elias King, our porter, in our cellar. It is the basement referred to by Mr. Granger. It is a proper and secure place for the custody of goods on storage. No person is allowed to go down without an order from Mr. Granger. It is under lock and key.

Q. When did you and Elias King open the four trunks?

A. On the first of December. We had no difficulty in opening two, as they were tied with ropes. I had not seen them on their arrival. We opened the two trunks and

they came apart themselves. It did not require any effort at all. It was as much as we could do to keep them together. We opened the other trunks with a hatchet. They contained second-hand foreign books in the four different trunks. I made no list of the books. I should judge there was one hundred and fifty to two hundred small, bound, books. It is not my custom to make a list. The custom is to look into the contents of packages to see if we could find the owner, which by that means we often do. I also saw a lot of second-hand music, probably ten or twenty dollars' worth. I would not give ten dollars for it. I think some of the books were marked "Dietz." I found an empty bottle that once had ottar of roses in it. It was empty. I tried it and turned it to our porter to examine it. It was empty, I am positive about that. The inside of the bottle was about the size of a quill. I found an old-fashioned parasol. It was not an umbrella. It was covered.

Q. Was there any such a handle to it as the plaintiff has described?

A. Not that I saw. I examined the four trunks. I did not take all the books out. I saw there was no chance of finding out the owner, and I put the things back. There were table-cloths and napkins, quite ordinary. I do not know how many. I saw nothing extraordinary about them at all. There were a lot of either calico or chintz curtains, which were faded; they had brass rings to them. I think they were nothing more than common calico or chintz curtains; there may have been some brown Holland. There was a portfolio lying on the top of the trunk, about two-thirds larger than a lady's common-sized hat box. It contained some engravings, which looked as if some person had undertaken to learn to draw. I did not find any paintings. The sketches were not professional. I did not find any clothing. I have told you exactly what I have seen. If other things were in there, they were not in my sight. I looked to see if there were any valuables, but I discovered

none. I made no list of the things. I put them down in my books as "Books and Clothes," and they were sent in due time to auction and sold. I did not attend the sale; I had a clerk there to see to the prices. The trunks sold for thirty-three dollars for the four trunks.

[*Cross-examination by Mr. Hirst.*]

Q. Have you that memorandum you made of the contents of those trunks?

A. I have not as regards the full list. I said "Books and Clothes," for the purposes of the sale.

Q. And yet you say there was no clothing?

A. I mentioned clothing on my book, intending to put household apparel, table-cloths and napkins. I considered they came under the clause of clothing. That is the way I wrote it down in my book. There was no clothing at all. It was a memorandum made for myself. I looked over these things to ascertain if I could find who was the owner of the goods.

Q. Did Mr. Granger tell you that the owner had been there several times?

A. He did not.

Q. Did he say that she stated to him that when she got a house she would return for the goods?

A. He did not; I knew nothing about that.

Q. Prior to the act of Assembly, how often did you hold sales?

A. Every year in the month of December.

Q. Goods left in October would be sold December the same year?

A. No, sir. It would depend entirely when we had the sale.

Q. I understood you to say that December is the month of your sales?

A. We have sold in December, and sometimes in October; for the last four or five years it has been in December.

Q. Have you sold in December goods left in your Office prior to the first of July preceding?

A. Yes, sir.

Q. If goods are left there in November, and your sales are in December, they would not be sold for thirteen months?

A. The list would be made out the first of July and the stock would be sold in either the month of October, November or December—not until the next auction sale.

[*Re-examined by Mr. Webster.*]

Q. You petition to the Court whenever you want to sell?

A. Yes, sir. When the stock on hand becomes too large, I come up and notify you. There is no fixed rule for any time. We have had ten or fifteen sales.

[*By Mr. Hirst.*]

Q. Have you ever sold oftener than once a year?

A. No, sir. We have these months to pick out of.

[*Arthur O. Granger re-called by Mr. Webster.*]

Q. You made out this list for a petition to the Court?

A. Yes, sir. These four trunks were marked “Mrs. P. Schlessinger.” That was all that was on them.

FREDERICK NAGLE sworn for defendants.

[*Direct examination by Mr. Webster.*]

Q. What is your business?

A. I am a bill-poster. I posted the hand-bills for this auction sale of Adams Express Company’s unclaimed packages, along Third street, Market street, a few along Chestnut street, and a few outside on the corner of Sixth and Chestnut. We got them as near the office as possible. We didn’t go to the depot or the auction store. We posted twenty-five or more.

[*No cross-examination.*]

ELIAS KING sworn for defendants.

[*Direct examination by Mr. Webster.*]

Q. What is your business?

A. Porter at the Adams Express office—house-porter—and have been there close on nine years. I recollect seeing this lady and also of examining these four trunks that Mr. Gorman spoke of. Mr. Gorman and I examined them down in the basement. We had no trouble in opening two of them, they were tied with ropes. The others we forced open. The trunks contained about a couple hundred, or one hundred and seventy-five old books, and engravings. It was in a dilapidated state. The next trunk contained sheets, and a pair of faded curtains with brass rings, napkins and table-cloths. I should judge about three or four dozen napkins. I couldn't say how many table-cloths; probably three or four pair of sheets. I could see the curtains were faded and looked to be calico or chintz. In the other trunks were some books, probably some sheets, an old parasol, that looked as if it was made in the year one. I didn't see any umbrella in there.

Q. Did you see this bottle of ottar of roses?

A. There was nothing but the bottle. There was not a drop in it. I did not smell any perfume. I am positive it was empty. I did not see any of these rosaries or a photographic album. I have given a full description of the contents of the trunks. I have heard the description given by the lady and her son. That is all I saw.

Q. Did you see all that was in them?

A. I did.

[*Cross-examination by Mr. Hirst.*]

Q. How many other trunks were there?

A. I suppose there must have been twenty or thirty. We did not open any of the other trunks, and I do not

know what was in them. Mr. Gorman mentioned, at the time we opened these four trunks, that from their heft he thought they were valuable, and we opened them to see what the contents were before we sold.

Q. Were all the things taken out of these four trunks?

A. No, sir; not from the bottom.

Q. Did you take anything out of the trunks?

A. No; we hoisted the lid.

Q. How long did it take you to go through these four trunks?

A. I should judge half or three-quarters of an hour.

Q. Is the basement a light or a dark one?

A. It is lightened. It has a wooden floor.

[*Re-examination.*]

Q. If you did not take anything out of the trunks how did you examine their contents?

A. Lifted them up. We did not take them out. We handled them carelessly to see what they were—the napkins, curtains and sheets, and things of that kind. We did not find any knives and forks. Mr. Gorman and I handled the things.

Q. You opened the trunks for the purpose of examination?

A. Yes, sir. We hoisted a few things, and then put the lid on the trunk and tied the trunks up.

Q. Was the examination sufficient or not to have enabled you to see the contents of the trunks?

Objected to.

[*By the Court.*]

Q. Did you make a general examination of the contents?

A. We saw all that was down to the bottom of the trunk.

[*By Mr. Webster.*]

Q. Do you tell the jury what you saw in the trunks enables you to tell their contents?

A. Yes, sir.

HENRY W. ALLEN, sworn for defendants.

[*Direct examination by Mr. Webster.*]

Q. What is your employment at the Adams Express Office?

A. Porter; and have been between nine and ten years. I recollect the plaintiff and her son. I was in the office when she came there and asked to get something out of the trunk, when Mr. Granger ordered me to go down with her, and she and her son went down. The trunk stood on the end, and I turned it down on the flat, and I untied the rope, and she got out what she wanted, and after that I tied the trunk up again, and she and her son came up-stairs. I am pretty certain she got out one book, but whether it was one or two, I don't remember. I am positive she and her son went down there together, and came up again. I don't remember whether she used any key or not. There was one hinge broken, so that you could slip the lid one side. I left the lid down, and drew the lid back again and tied it up. I don't know whether they used a key or not; I rather think not; I could not say positively. They were not very long. I think that was all I saw.

[*No cross-examination.*]

E. COLEMAN, sworn for defendants.

[*Direct examination by Mr. Webster.*]

Q. What is your position in the Adams Express Company?

A. General Superintendent. I know the authority given to Mr. Granger and other of the clerks in respect to the duration of time in the keeping of freight. The instructions are that it shall not be kept over sixty or ninety days, and notices are served to that effect.

Q. Has Mr. Granger or any other clerk instructions to keep freight in your establishment for a year?

A. No, sir; no one has such authority. It would be a violation of the rules.

Q. You have heard a good deal of the testimony in regard to the contents of these trunks, what is the practice of the Company in regard to carriage of that kind of freight?

A. One-eighth of a cent on the value, and this charge of eight dollars was for the freight, and not for the value.

Q. According to the usual practice of your business, if you had known the contents of these trunks, what would you have done with them?

A. We should have told the woman to take them right away; that is, we should not have been responsible for them a single day. If she told us the value of them, we should have put them into a secure place, where they could have been kept, and we should not have sold them under any circumstances, without giving more notice to the party. They were sold as ordinary freight. Our storeroom, where we keep freight, is under lock and key.

Q. Who has access to it?

A. The porter, Elias, who has charge of the unclaimed packages. I think he has the key of it, and it is in his custody and care, under the instructions of Mr. Granger. It is a place for ordinary freight. No one is allowed to have access to the room.

Q. Would you have kept this property there, if you had known its alleged value?

A. Not a day.

[*No cross-examination.*]

J. S. BIRD, sworn for defendants.

[*Direct examination by Mr. Webster.*]

Q. What is your business in the Adams Express Office?

A. Clerk. I attended the auction sale of these trunks, at Martin's, the auctioneers. I have got my minutes here. There were four trunks; one sold for nine dollars, one for nine and a-half dollars, one for eight and a-half dollars, and one for five and a-half dollars—total, thirty-two and a-half dollars.

Q. Were the contents of the trunks displayed at the auction sale?

A. No, sir.

Q. You had a long list to sell that day?

A. It kept us two days to complete the sale.

Q. The contents of packages, such as trunks and boxes, were sold and the contents not declared?

A. Yes, sir; that is the custom. We sell them as a package.

Q. Many of these things were matters of no value?

A. Yes, sir; large numbers.

Q. Did you happen to know before this sale took place what was in those different packages?

A. I did not.

Q. You did not know whether Mr. Gorman knew?

A. I did not.

[*Cross-examination by Mr. Hirst.*]

Q. Will you tell me the bid for those things?

A. I cannot. It is impossible. It is merely a memorandum of the articles sold. It is impossible for me to give the name of the purchaser of those trunks. Martin's could have furnished that information. I cannot tell whether they were all bought by the same person. They were sold separately, and probably bought by different people. Probably twenty-five or fifty trunks were sold that day.

H. W. GORMAN recalled.

[*By Mr. Webster.*]

Q. What has become of Martin's?

A. Disappeared in March following the sale.

Q. Were you able to find out the purchaser of these things?

A. They said that they knew of one trunk, and if the lady was willing to pay one hundred dollars they would tell who bought it. I had hard work to trace them to get my money.

[*Cross-examination by Mr. Hirst.*]

Q. Do you know Mr. Frank Moore?

A. No, sir; not by name, certainly.

Q. Did you attend to the sale of Martin's goods when they went away?

A. I did not. I know that I had great trouble in getting my money, and then had to take it in instalments. It was some fifteen dollars.

Q. You do not know whether any of these trunks were sold as their property?

A. I do not. I did not attend the sale.

[*Defendants close.*]

[*John Nixon recalled in rebuttal by Mr. Hirst.*]

Q. You said you saw these trunks at Martin's auction store?

A. Yes, sir.

Q. Were any ropes around any of them?

A. I can't say positively; not that I have any recollection of.

Q. Would you have seen ropes around the trunks if they had been there?

A. It would depend whether I was in a hurry or not.

Q. Do you recollect whether they were roped or not?

A. I thought of buying one of them myself. I thought they were valuable by the heft. I didn't take notice whether they were roped or not.

[*Both sides closed.*]

CHARGE OF JUDGE THAYER.

GENTLEMEN OF THE JURY:

The plaintiff, Mrs. Mary Schlessinger, claims in this suit to recover damages against the Adams Express Company for injuries which she alleges she has received by the loss of her property, arising, as she says, in consequence of the negligence or improper conduct of the defendants, the Adams Express Company. It appears from the evidence that the plaintiff, Mrs. Schlessinger, had four trunks, which are described by her to have been trunks of large dimensions, in the city of New York. These trunks she represents to have been full of articles of various descriptions, and she alleges the defendants undertook to bring them from New York to Philadelphia for her. The trunks were accordingly brought from the city of New York by the Express Company, and arrived, according to the evidence of the clerk in the office of the Company, on or about the Twenty-eighth of April. Mrs. Schlessinger, it would appear, was at that time living in the city of Philadelphia. She had formerly resided temporarily in the city of New York, and the trunks, according to her statement, were left in New York, in the care of a Madame Lamporte, who kept a boarding house in that city, at which Mrs. Schlessinger formerly stopped. She came from New York, leaving these trunks at the boarding house of this lady, and she desired to have the trunks sent to Philadelphia. They were accordingly brought to Philadelphia by the Adams Express Company. Mrs. Schlessinger, according to her own statement, had not seen these trunks since the previous January or February.

They came here, as I have said, in the latter part of April. She had left the trunks in New York, as she says, locked up, and she not having been to New York since that time, I suppose did not, as she says, see them in the interval which elapsed between her having left them under the care of Madame Lamporte, in New York, and the time when they arrived here. What occurred between the parties after the trunks arrived here, is the subject of a very serious difference between them, and much of the controversy hinges upon that difference. The plaintiff, Mrs. Schlessinger, alleges that she called at the office of the Company after the trunks had arrived, and informed the clerk that owing to the fact that she thought of changing her boarding place and going to house-keeping, it was inconvenient to have those four trunks sent to the place where she was then only temporarily staying, and asked him if they would be willing to keep them for her. She says that the reply made was that they would keep them, but not more than a year. She further says that she then asked what amount of storage would be charged for the keeping of the trunks, and that the reply was, they were not allowed to take storage, but that they would keep the trunks for a year. She further states that she offered at one of these interviews at the clerk's office to pay the freight upon the trunks, which amounted to eight dollars, or at any rate, that she asked whether she should pay it, and was informed that she need not trouble herself about it until they delivered the trunks, or until she took them away. She says further, that subsequently, in the latter part of the month of June, 1870, she went again to the office of the Company in company with her son, who desired to get a book out of one of the trunks, and that the same assurance was then repeated with regard to the willingness of the defendants to keep the trunks for a year, in the presence of her son, and her son corroborates her to that extent. He has testified that the clerk told his mother that they would keep the trunks for a year, but not

longer. The defendants contradict this statement entirely. The clerk who was in charge of the department of unclaimed packages, testifies that he did not give Mrs. Schlessinger any such assurance; and he further testifies that he was not asked how long they would keep the trunks. His version of the interview is that she said she would shortly send for the trunks, and he then assented to that, either expressly or tacitly; but that she gave him the assurance that she would in a short time send for the trunks, and he explicitly denies having entered into any agreement, or having given any assurance on the part of the Company that they would undertake the care or custody of the trunks for a year or any other length of time. It is further answered to the statements of the plaintiff, that the clerk had no authority to make any such arrangement; that if he did do it, it was beyond his power to bind the Company in any such arrangement—that it was altogether beyond the range of his authority, inasmuch as it was in contradiction of the well established regulations of the Company.

With regard to this last point, I am bound to say, that although there may have been a lack of authority given to the clerk to enter into any such engagement, yet if, he being an agent of the Company, entrusted with the control and management of that department of the business, did in truth and in fact, when applied to for information in regard to it by Mrs. Schlessinger, make the answer which is imputed to him, then the Company is bound by it. It is impossible that the public should know all the private regulations of a Company engaged in such a business as this. The public have a right to suppose that the agents and officers of such a Company are authorized to answer for the Company in regard to all matters which are within the scope of the particular duty confided to them. The public have a right to regard the answer of the agent as the answer of the Company, if it be an answer connected with the duty which is entrusted to the agent by the Company.

Therefore, if you believe in point of fact that Mr. Granger, or anybody else who had competent authority from the Company to attend to this department of the business, did make this answer, then the Company are bound by it, although he might in doing that, have exceeded the regulations or instructions of the Company on that subject. The important inquiry, perhaps, is whether in point of fact he did enter into such an engagement upon the part of the Company, as is alleged. If he did, then the Company are bound by it. If he did enter into such an engagement, namely, to keep this baggage for a year, then it follows as a necessary consequence that the defendants had no right to sell the trunks within a year, in order to enforce the payment of their lien for freight—at any rate, without demanding the freight. It might, perhaps, have been within the power of the Company to have rescinded such an engagement if it became inconvenient for them to perform it. I am only assuming now, that they made such an engagement for the purpose of the argument. I say it may have been competent for them to have rescinded such an engagement if it became inconvenient for them to keep the trunks, by giving notice to Mrs. Schlessinger, demanding the freight and informing her that the trunks could not be suffered to remain beyond a certain day under their custody. But without such a notice, then they had no right to sell. Now, whether they ever did enter into such an engagement—whether the clerk ever did make the declaration imputed to him by Mrs. Schlessinger—whether he ever made any such promise, which she alleges he made, is a question of fact which I submit entirely to your decision, upon the evidence in the case. Supposing, however, that no engagement was made by him on behalf of the Company to keep the goods for a year, what is then the relative situation of the parties under that aspect of the case? If it is true, as Mr. Granger has testified, that the plaintiff agreed to come very shortly and give such information to the Company as would enable

them to send these trunks to her, then it was plainly her duty to have complied with that promise. If she entered into that engagement, she ought to have come within a reasonable time and have taken the trunks away, or given information which would have enabled the Company to have delivered the trunks to her; and if she neglected to do that, and left them in the hands of the Company against their consent, then the trunks would be there at the risk of the plaintiff so far as all the ordinary accidents and chances to which they were exposed are concerned. But nevertheless the defendants were bound to take ordinary care of the property while it actually remained in their possession. In other words, the neglect of the plaintiff to take away the trunks, if she promised to do so, would not justify the defendants in making an improper or illegal disposition of the property, subsequently, if any such disposition was made; nor does it relieve them from that ordinary care which they are bound to take of all property left in their charge under such circumstances. I do not know that the question of ordinary diligence can arise in any aspect of this case, except one, and perhaps the evidence upon that point is hardly of sufficient magnitude or weight to raise the question.

I shall leave it to you to say whether it does or not. If these trunks were tampered with while in the possession of the defendants—if any of the property which has been said by the plaintiff to have been in these trunks was taken out of the trunks while in their custody by persons in their employ and that occurred through any want of ordinary care on part of the defendants, then they are responsible for them. I do not think that there is the slightest evidence of that, except it should be inferred, from the discrepancy which exists between the evidence of the plaintiff's and that of the defendants' witnesses in regard to the contents of the trunks when they came to be examined by the agent of the Company preparatory to their sale. There is a very considerable

difference between the statements of the plaintiff's and defendants' witnesses in regard to the contents of the trunks. If the trunks have been opened by anybody, or the things have been abstracted while in the custody of the defendants, and if that occurred by the negligence or want of ordinary care of the defendants, then they are responsible. They are responsible for the use of ordinary care in the taking care of the property while it remained in their custody, even though they should be during that period merely voluntary bailees of the goods. But the question appears to me to be rather whether the Company were guilty of any improper conduct in the subsequent treatment of these goods, and whether they appropriated these goods in any unlawful manner or not. That seems to me to be the real question in this case rather than any question of negligence, because we can hardly describe that as negligence, perhaps, which is due to the direct and avowed act of the party himself in the exercise of what he claims to have been a legal right. These goods remained in the possession of defendants until December, 1870, having arrived at their office on the 28th of April. In the first week of December they were, according to the testimony of Mr. Gorman and Mr. King, examined by them. They made such an examination as you have heard them describe. They were then sent to auction and sold on the 30th of December, 1870, and this is alleged was done in pursuance of an order of the Court of Common Pleas, which, as the defendants say, protects them in having made that sale. They say that, having disposed of the property in a manner provided by law, and under the sanction of an express order of a Court of competent jurisdiction, that they are absolutely exempt from responsibility for making that sale.

Whether they are exempt or not depends upon certain facts in the cause. In the first place, they are not protected by that order if their agent agreed to keep the goods for a year; if that year had not elapsed. In that case they had no

right to apply for the order, being bound by the special agreement. If they entered into any such agreement as that which the plaintiff has described, they had no right to make the application to the Court of Common Pleas for the order of sale, and in that case the order would not exempt them from the responsibility for selling the goods. Suppose that they did not enter into the engagement imputed to them to keep the trunks for a year; and suppose there was no contract on their part to keep the goods, and that their version of the affair is the true one, and that Mrs. Schlessinger informed them that she would call for them in a few days, and they only suffered the goods to remain temporarily in the premises until the plaintiff should send for them after a brief lapse of time. Then, if the defendants were in no default in that respect, and if Mrs. Schlessinger was in default in not keeping her promise to send for them within a brief period, they had a right to make the application to the Court under the Act of 1861 which they did make for the order of the sale of these goods, because they were not bound to keep them forever after the plaintiff had promised to come for them within a very short time, or to send for them, or to give the defendants information where they could send them. They were not bound to continue to be her bailees for these goods against their own consent; and if she did not comply with her promise they had a right, after the lapse of a reasonable length of time, (and I think until the month of December would have been a reasonable length of time, for the goods came in April,) to give her notice, and make the application, if they did not know her residence, which they did make to the Court of Common Pleas for the order of sale. If they made that application under such circumstances in good faith, and proceeded to execute the order in good faith, then they would be exempt from responsibility arising from the sale of the property. But a question arises here as to whether they did execute the order,

the protection of which they claim. The order of the Court, made under the Act of 1863, was made for the purpose of enabling commission merchants, carriers, factors and others to enforce their liens against property in their possession by ordering the sale of the property. The order of the Court under the application made in pursuance of the act was for the sale of the said goods, wares and merchandise. Was that order executed by the sale which was made of this property in the manner in which it was made? Had the defendant any right, under an order, to sell trunks locked up without stating whether they had anything in them?—in a lump, without exhibiting them and without any notice of any kind as to the contents of the trunks, so that no one knew whether they contained stones or ingots of gold, valuable or worthless things? Had they any right to execute this order of sale in such a manner as that? In regard to that I am bound to instruct you most emphatically: they had no such right. It was not a proper execution of the order made by the Court of Common Pleas. The Act under which the order was made expressly says that the surplus derived from the sale of the goods shall be retained by the commission merchant, factor or the carrier, to be paid to the owner of the goods. Can it be supposed for an instant that the Legislature intended anything but the sale of the goods? Can it be imagined that they intended that a factor or carrier who has a bale of goods consigned to him, and the consignee of which cannot be found, is authorized to sell the goods for his lien and keep the surplus from the owner without stating what its contents are, and without giving any information to the parties who bought what was in it? It cannot be considered a sale of the goods. It rather resembles, as has been said, a lottery. The defendants were bound, to act in good faith, to have exposed these goods for sale at a public auction after the manner in which goods are usually sold. The course which was adopted was the more improper inasmuch as they themselves, or

their agents, had previous to this blind sale, examined these trunks, and knew precisely what was in them. It is not to be borne that men who have the custody of property under such circumstances shall first rummage among the trunks and ascertain precisely what the packages contain, and then put them up to sale as trunks, the contents of which are unknown. Such a practice opens the widest door to fraud and bad faith. Therefore I feel bound to instruct you that the defendants did not fulfil this order of the Court of Common Pleas in a proper manner, and that the sale in the manner in which they acted was an improper appropriation of the goods, and was, in point of law, a wrongful conversion of the goods.

It is easy to be seen how much trouble would have been avoided by the defendants having proceeded in a manner, which it seems to me the rights of the party demanded. If, for example, the defendants had made an inventory of this property, we should have had no dispute here to-day in regard to the contents of the trunks. It would have been incapable of dispute as regards the contents of the trunks. It was not considered by them necessary to make even an inventory of the contents of the trunks. If they had not made an inventory, but sold the goods after taking them out of the trunks, can any one doubt there would have been some surplus remaining to the plaintiff from the sale of these goods? The whole amount of the defendants' claim for freight was eight dollars. The expense of the application to the Court had added something to that, though probably not much, inasmuch as the application related to many other packages as well as to the plaintiff's trunks. Can any one reasonably doubt that, considering the number of articles that even the defendants' witnesses alleged were in these four trunks, that, if this property had been exposed to sale at public auction in such a manner in which bidders could have known what they were buying, that something would have been left which the defendants would have been bound to have retained for the benefit of the plaintiff. It

seems to me to be in the highest degree unjust that they should claim the protection of this law, unless they have acted themselves in accordance with the law. Unless they have taken such care of the rights of people who are not present, and cannot protect themselves, as the law obliges them to take, they do not take such care, when they sell property locked up in trunks, and in effect tell those who are to buy "you buy whatever the trunk may contain, we do not know what is in it, take it away, whatever it is, more or less." What sensible man, what trader, or person present, desirous of making an honest purchase, would bid under such circumstances as these? It is a kind of an auction which may very well gratify those who are in the habit of embarking in lotteries and such enterprises, but that any merchant or person, desirous of making a fair and honest bargain, should bid at such sale for the contents of a thing which are not even permitted to be seen by him, and professedly not known by the man who sells, is, I think, beyond the ordinary experience and observations of human life.

If then this sale was conducted in that manner, it was an unlawful sale. It was not such a sale as was ordered by the Court, and the defendants cannot claim the protection of the order of the Court unless they have complied with its terms. All that remains for me to say is something with regard to the value of these goods.

In the first place, it is necessary for you to determine from the testimony as to what were the contents of the plaintiff's trunks. You have heard the descriptions of the plaintiff and her son of those articles. That is the only testimony which she has presented to you, but you have heard on the other side the testimony of the defendants' witnesses, Mr. Gorman and Mr. King, as to what they saw in the trunks when they examined them prior to the auction sale. It is necessary to form some definite idea of the contents of the trunks in order, of course, to ascertain what the value of the things was. It would be very dangerous indeed for a

Jury without a knowledge of the actual contents of these trunks to undertake to guess at what might be contained in them, or to undertake to give any large amount representing the value of things which might be contained in these four trunks.

The Jury in this matter should proceed with as much care and exactness as the evidence will permit. They should bear in mind in considering the evidence of the plaintiff, the natural bias which possibly may have influenced her from her interest in the result of this case—a bias of which she may be unconscious, and which may to a certain extent have affected her testimony, although she may have desired to state nothing but what she believed to be absolutely and strictly true. It is very important to remember the position of the plaintiff and her son, upon whose testimony, so far as the plaintiff's case is concerned, the question of value is to be determined. You are to bear in mind, constantly, their relation to the case and to make such allowance for it as you see proper. Of course no more. It is the plaintiff's duty to satisfy you upon that point. The value of these things is not to be affected by any considerations which are merely personal to the plaintiff herself. The value of this property is not to be affixed by any mere fancies or by any sentiments, however honorable, natural and proper those sentiments may be. An heir-loom in a family, the picture of an ancestor, or a memorial of a friend, may be of inestimable personal value to the owner. There may be sentiments connected with them, which it is impossible to measure by any pecuniary standard. It is not by such considerations that you are to arrive at the value of the plaintiff's property, for the law does not recognize any such difficult and impossible standard as a measure of value. It adopts a more practical method of ascertaining the value—a method which can be applied practically to the relations of human life, which is susceptible of some degree of certainty and which in its application will do justice between man and man. There-

fore in determining the value of these things you are not to be affected in your estimates by any such ideas as these to which I have referred. You are to set the market value upon each of these articles if you should find for the plaintiff, and you are to determine what each of them is worth pecuniarily—what they would bring if sold at a public sale.

Now, very many of these things were certainly things of great antiquity. The table-cloths which were valued by the plaintiff at three hundred dollars a piece were of very great age. They were made for her mother, according to her statement, as a part of her wedding trousseau. Her mother had been dead twenty years, at the time this lien occurred, therefore these things must have been of very considerable age. Then, as the plaintiff says, they had not been used, but she kept them with a kind of religious care in her possession, as things that she valued very highly but, nevertheless, you cannot, in determining their value, cease to remember that although these things may have possessed a very great value for her, owing to the associations which surrounded them, their intrinsic value must have been materially affected by the age of the articles themselves alone, leaving out any other considerations with regard to them.

There were undoubtedly a great many books in one, or some of these trunks. Mr. King and Mr. Gorman say that they saw from one hundred and fifty to two hundred books. The son of the plaintiff has given quite a catalogue of books, some of them, very probably, you will consider valuable in a pecuniary point of view, and many others perhaps of not so much value. There was also according to the plaintiff's testimony a considerable amount of table linen, bed linen and napkins. There were engravings and rosaries to which she attributes considerable value, though what the value of these articles may have been she did not state. There was also a photographic album. And some of these things appear to have been seen by Mr. Gorman and Mr. King at the time they made their investigation into the contents of these trunks, thus identifying them.

There is perhaps no discrepancy between the general character and the description of the articles, as testified to by the plaintiff and the defendants' witnesses, though there is a very wide discrepancy in regard to the testimony as to their value and their general condition and quality.

I shall leave that question to you entirely, with the remark that it is necessary to be cautious, of course, in estimating the value of such property. I am sure you will look at the subject as men of business and common sense, and if there should be a verdict for the plaintiff, you will affix such a value to these articles as you think they would have brought at a public sale. You are not, if there should be a verdict for the plaintiff, to inflate the damages by affixing any fanciful values, but you should, in doing justice between the parties, affix such a value as you think the articles really and intrinsically possess—such a value as would be represented by the prices they would bring if they had been sold.

I have said, I believe, everything I have occasion to say, except to answer some points presented to me by the defendants' counsel.

In regard to the first point: If the defendants offered to deliver the property, and if the plaintiff agreed to come within a short time and take it away, so that the possession of the defendants became that of, as it were, compulsory bailees against their inclination and will, through the default and negligence of the plaintiff, why then the responsibility which attached to them would be that of gratuitous bailees, as stated in this point, but that responsibility is for ordinary care, and such a care as a man of ordinary prudence would take of his own property.

In regard to the fourth point, I think I have already instructed you in regard to the effect of this order of sale, and I do not consider it necessary to repeat what I have said upon this subject.

I decline to instruct you, as required, upon the fifth point, that there is no evidence of the contents of these

trunks when they came to Philadelphia. In the first place, there is the evidence of the plaintiff and her son. It is true they were not in New York when these trunks were shipped to Philadelphia. They were in Philadelphia ; but they have testified that the trunks were in the same condition when they arrived as when they left them, so far as they could see externally. It is true they did not see these trunks in New York for a considerable time before they were shipped from New York to Philadelphia by the Adams Express Company. The trunks were sent here in April. It would, of course, have been very desirable, if it were possible, that the plaintiff should have proved what the condition of these trunks was at the time they came into the hands of the defendants, or at some time more proximate to the date of their being shipped than that which has been shown. The Jury are to determine from such evidence as they have whether the trunks contained, in point of fact, the things which Mrs. Schlessinger says were in them in January or February, 1870, when she re-packed them and left them in the care of Madame Lamporte, in New York. I leave it to you to say whether such evidence is satisfactory. It is to be received, of course, with caution, and it is to be carefully examined into ; but, nevertheless, it is proper for you to consider it.

If the plaintiff is entitled to recover, she is entitled to recover not only the value but interest on the value of the property.

I decline to charge as requested in the second, third, sixth, seventh, eighth, ninth, and tenth points submitted by the defendants.

At the close of the foregoing charge of Judge Thayer, defendants' counsel, in compliance with the rule of the Court, presented the following exceptions to the charge :

1. To so much of the charge as instructed the Jury that if defendant's clerk, Mr. Granger, promised plaintiff to keep her trunks for one whole year, the defendants were bound by such a promise, even though the clerk exceeded his authority in making it.

2. In leaving to the Jury the question of ordinary care, when there was no evidence of the want of ordinary care.

3. In instructing the Jury that the auction sale, as made, was not an execution of the order of sale of the Court of Common Pleas, was no protection to defendants, and was a conversion in point of law.

4. In instructing the Jury to give the dry market value of the goods, when there was no evidence of any market value.

5. In leaving the case to the Jury to decide upon the contents of the trunks, and value, after the evidence of the plaintiff and her son.

6. In not answering defendants' first point, as requested.

7. In refusing to answer defendants' 2d, 3d, 4th, 6th, 7th, 8th, and 10th points, as requested.

8. To the answers given to the 5th and 9th points, and in not affirming both of said points.

APPENDIX.

TODD, MARY EMMA SCHLESSINGER
815, *vs.*
D. W. THE ADAMS EXPRESS CO.

Summons case, D. C., March 4th, 1871.

Exit, March 4th, 1871.

Returnable first Monday in March, 1871.

"Service accepted."

April 24th, 1871. Narr & Rule to plead, filed.

May 1st, 1871. Rule to produce on trial receipts mentioned in affidavit.

May 4th, 1871. Plea filed.

May 13th, 1871. Affidavit on Rule to produce papers,
filed.

June 14th, 1871. Rule discharged.

Feb. 24th, 1872. Jury called.

Feb. 28th, 1872. Verdict for Plaintiff, \$6000.

March 2d, 1872. Motion for Rule for new trial.

Eo die Reasons filed.

Henry W. Gorman, agent, being duly sworn, doth depose and say, that the plaintiff has in her possession or under her control, a certain paper or receipt, which contains matter pertinent to the issue in this case, dated on or about April twenty-sixth or April twenty-seventh, 1870, at New York,

issued by defendants for certain trunks, the alleged contents of which are the subject matter of this suit.

H. W. GORMAN,
Agent.

Sworn and subscribed to before me, this first day of
May, A. D. 1871.

J. W. COLEGATE,
Alderman.

MARY EMMA SCHLESSINGER	}	DISTRICT COURT,
<i>vs.</i>		<i>March Term, 1871,</i>
THE ADAMS EXPRESS CO.		No. 815.

Mary Emma Schlessinger, the above named plaintiff, being duly sworn according to law, doth depose and say that the goods and chattels in the declaration described came into the possession of the defendants from the hands of one Mrs. Judith Lamporte, in whose possession they had been left by plaintiff, in the city of New York. That she requested the agent of the Express Company in Philadelphia to send to New York for her goods, &c., and he promised to do so, and did do so, and that she saw them in the depot of the defendant after their arrival from New York. When and where the agent of the defendant promised to keep them for one year, and not a day longer, as is the custom of said defendant, and that the said goods were sold before the expiration of said year, contrary to the bailment aforesaid. That defendant never delivered to plaintiff nor to any person for her with her knowledge, any receipt for the said goods, &c., or any writing of any kind, and if any such receipt was ever delivered to Mrs. Lamporte, or any one for her, it was without the knowledge of this deponent, and the said

Mrs. Lamporte has broken up housekeeping, and moved away from New York city, and this deponent does not know where she is to be found, and has no means of ascertaining.

M. E. SCHLESSINGER.

Sworn and subscribed to before me, this eighth day of May, A. D. 1871.

CHAS. H. HOLLIS,
Notary Public.

In the District Court No. 815 of March Term, one thousand and eight hundred and seventy-one, City and County of Philadelphia.

The Adams Express Company, late of the city and county aforesaid, was attached to answer Mary Emma Schlessinger of a plea of trespass on the case. And thereupon the said Mary Emma Schlessinger, by M. Hampton Todd, her attorney, complains,

For that whereas heretofore to wit: on the first day of June, A. D. 1870, at the city and county of Philadelphia, the said plaintiff, at the special instance and request of the said defendant, had caused to be delivered to the said defendant divers goods and chattels, to wit: four large boxes, containing one umbrella handle, one flask of otto of roses, one Turkish rosary, ten bronzes, two chamber sets of Persian linen, each sett containing curtains and hangings for two windows, one large double bedstead, one bed spread and coverings for sofa and two arm-chairs, twelve table-cloths, one hundred and sixty-eight napkins, thirty-four sheets, twenty-four pillow cases, five hundred engravings, two oil-paintings, one crayon sketch, five hundred pieces of music, one box of water colors, three hundred books, twenty-four knives, one foot-warmer, one cushion, one bell, one overcoat,

one lamp, two walking-sticks, one photograph album, six engraving plates, one large tin box containing deed for lot in Ronaldson's burying-ground, one lot of private papers, and two manuscript novels of the said plaintiff, of great value, to wit: of the value of twenty thousand dollars of lawful money of the United States of America, to be taken care of and safely and securely kept by the said defendant for the said plaintiff, and to be delivered by the said defendant to the said plaintiff when the said defendant should be thereunto afterwards requested; and the said defendant then and there had and received the said goods and chattels for the purpose aforesaid, and it thereupon then and there became and was the duty of the said defendant to take due and proper care of the said goods and chattels, and safely and securely keep the same for the said plaintiff, and to re-deliver the same to the said plaintiff when the said defendant should be thereunto afterwards requested. And although the said defendant was afterwards, to wit: on the day and year aforesaid, at the city and county aforesaid, requested by the said plaintiff to re-deliver the said goods and chattels to the said plaintiff, yet the said defendant, not regarding its duty in that behalf, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf, did not nor would take due and proper care of the said goods and chattels, or safely or securely keep the same or any part thereof for the said plaintiff, nor did nor would, when he was so requested as aforesaid, or at any time before or afterwards, re-deliver the same to the said plaintiff, but on the contrary thereof, the said defendant so carelessly behaved and conducted himself with respect to the said goods and chattels, and took so little and such bad care thereof, that by and through the carelessness, negligence and improper conduct of the said defendant, the said goods and chattels being of the value aforesaid, afterwards, to wit: on the day and year aforesaid, became and were wholly lost to the said plaintiff, to wit: at Philadelphia

aforesaid, to the damage of the said plaintiff of twenty thousand dollars, and therefore she brings her suit, &c.

Second Count. And for that whereas also heretofore, to wit: on the day and year aforesaid, at Philadelphia aforesaid, the said defendant at his special instance and request, had the care of certain other goods and chattels, to wit: goods and chattels of the like number, quantity, quality, description, and value as those in the said first count mentioned of the said plaintiff; and thereupon it then and there became and was the duty of the said defendant, whilst he so had the care of the said goods and chattels, to take due and proper care thereof. Yet the said defendant, not regarding its duty in that behalf, did not nor would, whilst he so had the care of the said last mentioned goods and chattels, take due and proper care of the same, but wholly neglected so to do, and took such bad care thereof, that afterwards, to wit: on the day and year aforesaid, the said last mentioned goods and chattels became and were greatly damaged, injured, and wholly lost to the said plaintiff, to wit: at Philadelphia aforesaid to the damage of the said plaintiff of twenty thousand dollars, and therefore she brings her suit, &c.

Third Count. And also, for that whereas the said plaintiff, heretofore to wit: on the day and year aforesaid, at the city and county aforesaid, was lawfully possessed as of his own property, of certain other goods and chattels, of the like number, quantity, quality, description, and value, as those in the said first count mentioned, of great value, to wit: of the value of twenty thousand dollars of lawful money of the United States of America; and being so possessed, the said plaintiff afterwards, to wit: on the day and year aforesaid, at Philadelphia aforesaid, casually lost the said goods and chattels, out of his possession; and the same afterwards, to wit: on the day and year aforesaid, at Philadelphia aforesaid, came to the possession of the said defendant

by finding. Yet, the said defendant, well knowing the said goods and chattels to be the property of the said plaintiff, and of right to belong and appertain to her, but contriving, and fraudulently intending, craftily and subtly, to deceive and defraud the said plaintiff in this behalf, hath not as yet delivered the said goods and chattels, or any or either of them, or any part thereof, to the said plaintiff, although often requested so to do, and hath hitherto wholly refused so to do; and afterwards, to wit: on the day and year last aforesaid, at the city and county aforesaid, converted and disposed of the said goods and chattels to its own use, to the damage of the said plaintiff of twenty thousand dollars, and therefore she brings her suit, &c.

Fourth Count. And also for that whereas the said defendant, before and at the time of the delivery of the goods and chattels to it, as hereinafter next mentioned was, and from thence hitherto hath been, and still is a common carrier of goods and chattels for hire, to wit: from the city of New York in the State of New York, to Philadelphia aforesaid, to wit: at Philadelphia, &c. And whereas, also, the said plaintiff, whilst the said defendant was such common carrier as aforesaid, to wit: on the day and year aforesaid, at New York, to wit: at Philadelphia, caused to be delivered to the said defendant, and the said defendant then and there accepted and received of and from the said plaintiff, certain other goods and chattels of the like number, quantity, quality, description and value as those in the said first count mentioned, of great value, to wit: of the value of twenty thousand dollars, to be safely and securely carried and conveyed by the said defendant from New York aforesaid to Philadelphia aforesaid, and there, to wit: at Philadelphia aforesaid, safely and securely to be delivered to the said plaintiff, for certain reasonable reward to the said defendant in that behalf. Yet the said defendant, not regarding its duty as such common carrier as aforesaid, but contriving

and fraudulently intending, craftily and subtly to deceive and defraud and injure the said plaintiff in this behalf, did not nor would safely or securely carry or convey the said boxes and their contents aforesaid, from New York aforesaid to Philadelphia aforesaid, nor there, to wit: at Philadelphia aforesaid, safely or securely deliver the same to the said plaintiff, but on the contrary thereof, the said defendant, so being such common carrier as aforesaid, so carelessly and negligently behaved and conducted itself in the premises, that by and through the carelessness, negligence and default of the said defendant in the premises, the said boxes and their contents aforesaid, being of the value aforesaid, afterwards, to wit: on the day and year aforesaid, became and were wholly lost to the said plaintiff, to wit: at Philadelphia aforesaid, to the damage of the said plaintiff of twenty thousand dollars, and therefore she brings her suit, &c.

Fifth Count. And also, for that whereas heretofore, to wit: on the day and year aforesaid, at the city and county aforesaid, the said plaintiff, at the special instance and request of the said defendant, caused to be delivered to the said defendant certain other goods and chattels of like number, quality, quantity, description, and value as those in the said first count mentioned of the said plaintiff, of great value, to wit: of the value of twenty thousand dollars, to be by the said defendants safely and securely kept for the space of one year next succeeding the said first day of June, A. D. 1870, and at the end of said time, or in the mean time, to be safely and surely delivered in order and condition as received, to the said plaintiff, and the said defendant then and there had and received the said goods and chattels for the purpose aforesaid. Yet, the said defendant not regarding its duty in that behalf, afterwards, to wit: on the day and year aforesaid, at the city and county aforesaid, by itself and its servants in that behalf, conducted itself so carelessly, negligently and improperly, in and about the safely and se-

curely keeping for the space of one year next succeeding the said first day of June, A. D. 1870, and at the end of said time, or in the mean time, safely and surely delivering in good order and condition as received, the goods and chattels aforesaid; that by and through the mere negligence and improper conduct of the said defendant and its servants in that behalf, the said goods and chattels then and there became and were greatly damaged and destroyed, and wholly lost to the said plaintiff, to wit: at Philadelphia aforesaid, to the damage of the said plaintiff of twenty thousand dollars, and therefore she brings her suit, &c.

MOSES HAMPTON TODD,

Pro Plaintiff.

April 21st, 1871.

APPENDIX B.

*To the Honorable the Judges at the Court of Common Pleas
for the City and County of Philadelphia :*

The petition of the Adams Express Company, respectfully represents that they are common carriers of goods, wares, and merchandise, to and from Philadelphia and divers places in the United States. That they hold in their possession divers parcels of goods for delivery ; that the places of residence of the consignees of said goods, respectively, are unknown to your petitioners ; that your petitioners have a lien on said goods for the expense of the carriage of the same. Your petitioners annex a list of said packages, together with the names of the persons to whom they are consigned, hereunto annexed. Your petitioners pray for an order of court to make sale of the same.

(Signed) H. GORMAN,
Agent.

Sworn and subscribed to this nineteenth day of November, A. D. 1870.

(Signed) J. McCOLGAN, [SEAL]
Alderman.

* * * * *

Four trunks, Schlessinger Mrs. P. * * *

And now, to wit: November nineteenth, 1870, the foregoing petition being presented to court on motion of David Webster, attorney for the said Adams Express Company, the court order and direct the said Adams Express Company to make sale of the said goods, wares, and mer-

chandise at auction. Provided, that notice of such sale, together with the names of the person or persons to whom such goods have been consigned, shall be first published once a week for three successive weeks, in a newspaper published in the city of Philadelphia, and by six printed hand-bills, put up in the most public and conspicuous places in the vicinity of the depot where such goods may be.

(Signed)

JOSEPH ALLISON.

LIENS.

1. In all cases in which commission merchants, factors and all common carriers, or other persons, shall have a lien, under existing laws, upon any goods, wares, merchandise or other property, for or on account of the costs or expenses of carriage, storage or labor bestowed on such goods, wares, merchandise or other property, if the owner or consignee of the same shall fail or neglect or refuse to pay the amount of charges upon any such property, goods, wares or merchandise, within sixty days after demand thereof made personally upon such owner or consignee, then and in such case it shall and may be lawful for any such commission merchant, factor, common carrier or other person having such lien, as aforesaid, after the expiration of said period of sixty days, to expose such goods, wares, merchandise or other property to sale at public auction, and to sell the same, or so much thereof as shall be sufficient to discharge said lien, together with costs of sale and advertising: *Provided*, That notice of such sale, together with the name of the person or persons to whom such goods shall have been consigned, shall have been first published for three successive weeks in a newspaper published in the county, and by six written or printed handbills, put up in the most public and conspicuous places in the vicinity of the depot where the said goods may be.

2. Upon the application of any of the persons or corporations having a lien upon goods, wares, merchandise or other property, as mentioned in the first section of this act, verified by affidavit, to any of the judges of the courts of common pleas of this commonwealth, setting forth that the places of residence of the owner and consignee of any such

goods, wares, merchandise, or other property are unknown, or that such goods, wares, merchandise or other property are of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice as provided for in the first section of this act, then and in such case it shall and may be lawful for a judge of the city or county in which the goods may be, to make an order, to be by him signed, authorizing the sale of such goods, wares, merchandise or other property, upon such terms as to notice as the nature of the case may admit of, and to such judge shall seem meet: *Provided*, That in cases of perishable property, the affidavit and proceedings required by this section may be had before a justice of the peace.

3. The residue of moneys, arising from any such sales, either under the first or second sections of this act, after deducting the amount of the lien, as aforesaid, together with costs of advertising and sales, shall be held subject to the order of the owner or owners of such property.

4. That an act of the general assembly, entitled "An act in reference to liens of common carriers and others," approved the 16th day of March, Anno Domini 1858, (a) be and the same is hereby repealed.